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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 38

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS,

vs.

UNITED STATES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED OCTOBER 21, 1961
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 511

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS,

vs.

UNITED STATES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil Action No. 515-59 WB

UNITED STATES OF AMERICA, Plaintiff,

v.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS, Defendants.

COMPLAINT—Filed May 27, 1959

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. § 4), entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, in order to prevent and restrain a continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

[fol. 3] 2. Defendants Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America has offices, transacts business, and is found within the Central Division of the Southern District of California.

The individuals named as defendants herein reside within the Central Division of the Southern District of California.

II

The Defendants

3. Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (hereinafter referred to as the "Union") is made a defendant herein. The Union is a voluntary unincorporated association affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, and has its principal place of business in Los Angeles, California. The membership of the Union is composed in part of peddlers as hereinafter defined.

4. Meyer Singer is hereby made a defendant herein. Defendant Meyer Singer is, and at all times referred to herein has been, a business representative of the Union and has actively managed and coordinated the affairs and acts of the peddler members of the Union.

5. Lee Taylor, Downey, California, is hereby made a defendant herein. During all or part of the time covered by this complaint defendant Lee Taylor has been a peddler, as hereinafter defined.

6. Hubert Brandt, Long Beach, California, is hereby made a defendant herein. During all or part of the time covered by this complaint defendant Hubert Brandt has been a peddler, as hereinafter defined.

7. Walter Klein, Pacoima, California, is hereby made a defendant herein. During all or part of the time covered by this complaint defendant Walter Klein has been a peddler, as hereinafter defined.

8. Harold Carlis, Studio City, California, is hereby made a defendant herein. During all or part of the time covered by this complaint defendant Harold Carlis has been a peddler, as hereinafter defined.

[fol. 4] 9. Whenever in this complaint reference is made to any act, deed, or transaction of the Union, such allegations shall be deemed to mean that the officers, directors, agents, or employees of the Union authorized, ordered or did such act, deed, or transaction for and on behalf of the Union while actively engaged in the management, direction, or control of its affairs.

III

Co-conspirators

10. The peddler members of the Union, other than defendants, and the processors purchasing restaurant grease from peddler members of the Union, have participated as co-conspirators with defendants herein.

11. Other persons to the plaintiff unknown have participated as co-conspirators with the defendants herein.

IV

Definitions

12. Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels, and institutions.

13. Yellow grease is an inedible grease produced primarily by removal from restaurant grease of most of the moisture and impurities. It usually has a minimum melting point or titer of about 36 degrees centigrade; a yellowish color of about 37 FAS; no more than 2 per cent of moisture, impurities, and unsaponifiables; and a minimum content of about 10 per cent or more of free fatty acids.

14. Processors are persons or corporations engaged in the business of producing yellow grease from restaurant grease.

15. Peddlers are persons who are self-employed entrepreneurs engaged in the business of buying restaurant grease for their own account from restaurants, hotels, and institutions, transporting said grease in trucks owned or operated by themselves to the plants of processors, and selling such restaurant grease to said processors.

[fol. 5] V

Nature of Trade and Commerce

16. During the period of time covered by this complaint approximately forty persons, including defendants Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis, have been engaged in business as peddlers in Los Angeles County, California. The function performed by these peddlers in the purchase of restaurant grease, its transportation to the plants of processors, and the sale of said restaurant grease by the peddlers to processors, has been interrelated with and necessary to the production of yellow grease and its sale by processors.

17. In late 1954, after many of such peddlers became members of the Union, the "Los Angeles Grease Buyers Association" was formed. Its membership consisted of peddlers doing business in Los Angeles County, California, including defendants Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis. Thereafter, and until about March 1955, this Association employed an Executive Director and held monthly membership meetings at which were discussed, contrary to the advice of the Executive Director, proposals for price fixing and for allocation among peddlers of restaurants, hotels, and institutions from which restaurant grease would be purchased. In or about March 1955, following a dispute with defendant Meyer Singer (who was not a member of the Association) concerning the manner in which the Association was operated, the Association's Executive Director tendered his resignation and immediately thereafter the peddlers who had theretofore been members of the Union were transferred to a division of the Union called "Local 626B". From about March 1955 to the date of the filing of this complaint most of the peddlers doing business in Los Angeles County, California, have continued as members of "Local 626B".

18. Yellow grease is made from restaurant grease by processes which vary somewhat between different processors, but consist essentially of the removal of impurities from restaurant grease without change in the chemical properties or structure of the grease itself. The restaurant

[fol. 6] grease is removed from the cans, drums, or other containers in which it was transported to the processing plants from restaurants, hotels, and other sources, and this step may be aided by the use of steam. The grease is first screened to remove larger bits or pieces of foreign matter, such as bones, fat, meat, and garbage, and it then flows to a tank where it is heated by steam to a temperature high enough to drive off moisture. Solid impurities sink to the bottom of the tank during this heating process. In some processing plants, chemicals are added to hasten the precipitation of the solid impurities, and in others the extraction of impurities is aided by centrifugal separation. The cleansed grease is then pumped to a storage tank to await shipment to buyers. Sometimes grease which fails to meet the specifications of buyers for yellow grease is upgraded by the addition of waste cooking oil or tallow.

19. The processing of restaurant grease into yellow grease is usually performed on the same day that it is collected from restaurants, hotels, and other sources, or within a day thereafter. The yellow grease is usually shipped by processors to buyers as soon as enough has been accumulated to fill a tank truck, which may take from a day to a week or more, depending upon the volume of production of a given plant. The processors usually sell their yellow grease under contracts of sale executed before the time of the receipt by said processors of the restaurant grease, and their acquisition of restaurant grease is made to fill orders for yellow grease already accepted.

20. In the year 1958 approximately twenty-one million pounds of yellow grease were produced in Los Angeles County, California. Approximately seventeen million pounds, or about 82 per cent, were produced by four processors who purchased from peddlers a substantial part of the restaurant grease used in their production of yellow grease.

21. Two other processors produced the remainder of the yellow grease produced in Los Angeles County, California, in 1958, amounting to approximately four million pounds, or about 18 per cent. These two processors ac-

[fol. 7] quired most of the restaurant grease which they processed into yellow grease by direct purchases from restaurants, hotels, and institutions, and the transportation of such restaurant grease to their plants by their own trucks, operated by their own employees. These two processors purchased very little restaurant grease from peddlers.

22. A substantial part of the yellow grease produced in Los Angeles County, California, in 1958 was shipped to foreign countries. Approximately six and one-half million pounds, or about 31 per cent, of the total production of yellow grease in said county in 1958 were shipped to foreign countries without any change or further processing between the time of its production from restaurant grease and the time of its shipment in foreign commerce, other than reheating to a liquid form to facilitate its loading on ships.

23. In 1957, 1958, and the first two months of 1959 the four processors who purchased from peddlers a substantial part of the restaurant grease used in their production of yellow grease produced approximately thirty-three million pounds of yellow grease. Of this amount, approximately eight and one-half million pounds, or over 25 per cent, were shipped in foreign commerce from Los Angeles County, California, to foreign countries. Approximately 80 per cent of all restaurant grease used by these four processors was purchased by them from peddlers.

24. During the period from December 1955 to April 1956, another processor was engaged in business in Los Angeles County, California. This processor produced approximately one hundred fifty thousand pounds of yellow grease, of which at least sixty thousand pounds, or about 40 per cent, were shipped in foreign commerce from Los Angeles County, California, to foreign countries, and about 95 per cent was produced from restaurant grease purchased by said processor from peddlers.

25. The purchase, transportation, and sale of restaurant grease by peddlers, the production of yellow grease by processors from the restaurant grease purchased by them

from peddlers, and the sale of said grease for shipment [fol. 8] in foreign commerce, are integral and essential parts of the flow of yellow grease in foreign commerce. Any restraint upon or disruption in or interference with the purchase of restaurant grease by peddlers and its sale to processors, and any suppression or elimination of competition in the purchase and sale of restaurant grease by peddlers, and the purchase of restaurant grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce. Any restraint upon, or disruption of or interference with the purchase of restaurant grease from peddlers by processors, or the delivery of restaurant grease by peddlers to processors, necessarily directly restrains and affects the production of yellow grease by said processors and its flow in foreign commerce.

VI

Offense Charged

26. Beginning about the month of October 1954, and continuing to the date of the filing of this complaint, the defendants and the co-conspirators have engaged in an unlawful combination and conspiracy to suppress competition in the gathering, purchase, and resale by peddlers of restaurant grease and in the production of yellow grease therefrom in Los Angeles County, California, in restraint of the hereinbefore described trade and commerce in yellow grease with foreign nations, in violation of Section 1 of the Sherman Act. Defendants threaten to continue and will continue said offense unless the relief hereinafter prayed for is granted.

27. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants, the substantial terms of which have been and are that they agree:

(a) To organize and enroll peddlers in the Union and to limit the number of peddlers who can engage in business;

(b) To fix the prices to be paid by peddlers for restaurant grease to restaurants, hotels, and institutions;

[fol. 9]

(c) To fix the prices to be charged to processors for restaurant grease sold by peddlers, and the prices paid for restaurant grease by processors to peddlers;

(d) To allocate among peddlers the restaurants, hotels, and institutions from which restaurant grease is purchased by said peddlers;

(e) To allocate among processors the peddlers from whom said processors may purchase restaurant grease, to prevent said processors from purchasing restaurant grease from peddlers not assigned or allocated to them, and to require said processors to make payments into "health and welfare" funds for the benefit of those peddlers assigned or allocated to them;

(f) To allocate and divide among processors the quantities of restaurant grease which are gathered and sold by peddlers;

(g) To prevent processors from buying restaurant grease from any peddler who is not a member of the Union, and to cause processors to boycott non-Union peddlers;

(h) To compel peddlers to conform to the prices fixed for their purchase and resale of restaurant grease, and to the allocation of peddlers and restaurant grease between processors, by suspension or expulsion of non-complying peddlers from the Union;

(i) To compel processors, by strikes and picketing and by threats of strikes and picketing: (i) to adhere to the prices fixed for their purchases of restaurant grease from peddlers; (ii) to boycott non-Union peddlers; and (iii) to accept the allocations of peddlers and restaurant grease among processors;

[fol. 10]

(j) To eliminate certain processors from business, and to prevent other processors from acquiring restaurant grease from peddlers;

(k) To conceal and suppress evidence of the conspiracy alleged by pressure or threats or other means.

28. During the period of time covered by this complaint, and for the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which as hereinbefore alleged they combined and conspired to do.

VII

Effects of the Combination and Conspiracy

29. The aforesaid combination and conspiracy has had, among others, the following effects:

(a) Processors have been deprived of their right to purchase grease from peddlers of their own choice and peddlers have been deprived of their right to sell to processors of their own choice;

(b) The quantities of yellow grease produced by certain processors have been reduced and limited;

(c) Certain processors have been eliminated from the business of producing yellow grease and other processors have been prevented from acquiring restaurant grease from peddlers;

(d) Quantities of yellow grease produced and sold by certain processors for shipment to foreign nations have been restricted and reduced;

(e) The quantities of restaurant grease which can be purchased by each processor from peddlers have been fixed and limited;

(f) Processors have been prevented from buying restaurant grease from peddlers who are not members [fol. 11] of the Union, and non-Union peddlers have

been prevented from engaging in the business of buying and selling restaurant grease;

(g) Competition among processors in the purchase of restaurant grease from peddlers and in the production and sale of yellow grease has been suppressed and limited;

(h) The ability of peddlers to purchase restaurant grease from restaurants, hotels, and institutions of their own choice has been limited and restricted and the ability of restaurants, hotels, and institutions to sell restaurant grease to peddlers of their choice has been limited and restricted;

(i) The number of peddlers who can engage in the business of purchasing restaurant grease from restaurants, hotels, and institutions in Los Angeles County has been limited and reduced;

(j) Peddlers have been temporarily and permanently prevented from engaging in the business of buying and selling restaurant grease;

(k) The prices to be paid by peddlers for restaurant grease to restaurants, hotels, and institutions have been fixed and reduced to arbitrary and non-competitive levels;

(l) The prices charged by peddlers to processors for restaurant grease, and the prices paid by processors to peddlers for restaurant grease have been fixed and maintained at arbitrary and noncompetitive levels;

(m) Competition among peddlers in the purchase and sale of restaurant grease has been suppressed and limited.

[fol. 12] Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired, in restraint of the

foreign trade and commerce hereinabove described, in violation of Section 1 of the Sherman Act;

2. That the defendants be perpetually enjoined and restrained from, in any manner, combining, conspiring, or otherwise acting in concert, to restrain trade and commerce in yellow grease as hereinbefore alleged, and from participating in any agreements, understandings, or practices having the purpose or effect of continuing, reviving, or renewing the combination and conspiracy hereinbefore alleged;

3. That a preliminary injunction issue enjoining the defendants, and each of them, and that they be perpetually enjoined, from participating in any plan or program, and from coercing or forcing any processor, by boycott, strikes, or picketing, or by threats thereof, or by any other means, to participate in or conform to the terms of any plan or program,

(a) to limit the number of peddlers who can engage in the collection, purchase, or sale of restaurant grease;

(b) to allocate among peddlers the restaurants, hotels, or institutions from which restaurant grease may be purchased by peddlers;

(c) to allocate among processors the peddlers from whom the processor may purchase restaurant grease;

(d) to allocate among processors the quantities of restaurant grease to be purchased from peddlers;

(e) to prevent processors from buying restaurant grease from peddlers of their own choice or prevent peddlers from selling restaurant grease to processors of their own choice;

[fol. 13]

(f) to fix or stabilize prices for restaurant grease paid by peddlers to restaurants, hotels, and institutions, and sold by peddlers to processors;

4. That the peddler defendants be enjoined from participating in any strike, picket line, or boycott against any

processor or peddler, and from holding membership in and participating in the affairs of the Union, unless they become bona fide employees;

5. That the Union be ordered to terminate the membership of peddlers in said Union and be perpetually enjoined from accepting peddlers as members thereof, unless they become bona fide employees;

6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper;

7. That the plaintiff recover the costs of this action.

William P. Rogers, Attorney General; Robert A. Bicks, Acting Assistant Attorney General; Charles L. Whittinghill, Attorney, Department of Justice; Laughlin E. Waters, United States Attorney; George B. Haddock, Walter M. Lehman, Maxwell M. Blecher, Roger A. Clark, Attorneys, Department of Justice.

[fol. 14] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[Title omitted]

ANSWER TO COMPLAINT—Filed June 21, 1960

Comes Now Defendants Los Angeles Meat & Provision Drivers Union, Local 626; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis, and in answer to plaintiff's complaint herein admit, deny, and allege as follows:

I

Answering ¶II, §3 of plaintiff's complaint, defendants admit that Meat & Provision Drivers Union, Local 626 is a voluntary unincorporated association affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Defendants allege that [fol. 15] the "peddlers" referred to hold membership in a Subdivision B of the above local union. Defendants further allege that said Local 626 is a labor organization under §6 of the Norris-La Guardia Act, 47 Stat. 90, 29 U.S.C. §101, and §6 of the Clayton Act, 38 Stat. 731, 15 U.S.C. §17, and exists for the purpose of bettering the working conditions of persons working in the yellow grease industry.

II

Answering ¶II, §9 therein, defendants deny that the officers, directors, agents, or employees of the Union authorized, ordered or did any of the acts, deeds, or transactions for and on behalf of the Union as alleged in the complaint.

III

Answering ¶III, §§10 and 11 therein, defendants deny that they alone, or in conjunction with the "peddler members", or in conjunction with the "processors purchasing restaurant grease", or in conjunction with any "persons unknown", or any combination thereof, have engaged or participated in any conspiracy to do the acts or engage in the conduct alleged in this complaint.

IV

Answering ¶IV, §13 therein, defendants lack information or belief as to the allegation contained therein, and on that ground, deny each and every allegation contained therein and the whole thereof.

V

Answering ¶IV, §15 therein, defendants deny that "peddlers" are self-employed "entrepreneurs". Defendants al-

lege that said peddlers are businessmen-workers who per-
[fol. 16] form the same functional operation as do employee drivers within the yellow grease industry, e.g., the collection and transporting of restaurant grease to processing houses. Said peddlers directly compete with the employee-drivers within the industry.

VI

Answering ¶V, §16 thereof, these answering defendants, admit that defendants Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis were peddlers in Los Angeles County, California. Except as expressly admitted, defendants deny each and every allegation therein contained and the whole thereof.

VII

Answering ¶V, §17 thereof, these answering defendants admit that an association known as "Los Angeles Grease Buyers Association" was formed in 1955 and some of the peddlers became members thereof. Except as admitted, defendants deny each and every allegation therein contained and the whole thereof.

VIII

Answering ¶V, §§18 and 19 thereof, these answering defendants lack information or belief and basing its answer on that ground, deny each and every allegation therein contained and the whole thereof.

IX

Answering ¶V, §§20 and 21 thereof, defendants lack information or belief and basing their answer on that ground deny each and every allegation therein contained and the whole thereof.

X

Answering ¶V, §§22, 23 and 24, defendants lack information or belief and basing their denial on that ground, deny
[fol. 17] each and every allegation therein contained and the whole thereof.

XI

Answering ¶ 25 thereof, defendants deny each and every allegation therein contained and the whole thereof.

XII

Answering ¶VI, 26 thereof, defendants deny each and every allegation contained therein and the whole thereof.

XIII

Answering ¶VI, 27, defendants allege that in 1955 the vast majority of grease peddlers voluntarily made application to, and joined Meat & Provision Drivers Union, Local 626. Except as expressly alleged, defendants deny each and every allegation contained in 27 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k) and the whole thereof.

XIV

Answering ¶VII, 29, defendants deny each and every allegation contained in (a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), and (m) therein and the whole thereof.

For a Separate and Affirmative Defense, Defendants Allege:

I

The acts and conduct alleged in the complaint were in furtherance of legitimate trade union objectives and are therefore immune from the operation of the Sherman Anti-Trust Act, 26 Stat. 209, 16 USC 1.

For a Second, Separate and Affirmative Defense, Defendants Allege:

[fol. 18] I

The acts and conduct alleged in the complaint within the exclusive regulatory scope of the National Labor Relations Act, 61 Stat. 316, 29 USC 151 and the Labor Management Reporting and Disclosure Act, PL 86-275, 73 Stat. 519, and therefore outside the jurisdiction of the Federal District Courts.

For a Third, Separate and Affirmative Defense, Defendants Allege:

I

The acts and conduct alleged in the complaint arise out of a labor dispute within the meaning of the Norris-La Guardia Act, §7, 47 Stat. 90, 29 USC §101, and therefore this Court lacks jurisdiction to issue injunctive relief.

Wherefore, defendants pray:

1. That plaintiff take nothing by its complaint.

2. For all costs of suit incurred.

3. For such other and further relief as to this court seems just.

Hackler, Flaum & Ansell, By Herbert M. Ansell.

Affidavit of Service (omitted in printing).

[fol. 20] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[Title omitted]

STIPULATION OF FACTS AND ORDER THEREON—March 23, 1961

It Is Hereby Stipulated by and between plaintiff and the defendants, and each of them, by their respective attorneys, as follows:

The following facts are admitted and require no proof, and shall be accepted by the Court as being true for purposes of this action:

1. Defendant Los Angeles Meat and Provision Drivers Union, Local 626, transacts business and is found within

the Central Division of the Southern District of California. It is a voluntary unincorporated labor organization affiliated with and chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, composed of some 2,400 members, most of whom were and are truck drivers engaged in loading, unloading, and transporting meat and meat products for packing houses and [fol. 21] related employers. Between October 1954 and May 27, 1959 (the period covered by the complaint herein), from about 35 to about 45 grease peddlers were members of said defendant Union, and after April 1955, they held their membership in a subdivision within said defendant Union known as Local 626-B.

2. Defendant Singer, during the same period, was employed as a business representative of defendant Union. He is not and has not been an officer or an elected official, or executive board member, of defendant Union.

3. Defendants Taylor, Brandt, Klein, and Carlis, during said period from October 19, 1954 to May 27, 1959, were grease peddler members of defendant Union.

4. Throughout the period from October 1954 to May 1959, inclusive, A. J. Menard was secretary-treasurer of defendant Union; and Charles Rico and Mike Grancich were employed by defendant Union in the capacity of business representatives.

5. During the 1954-1959 period, there were in Los Angeles County, California, about 40 to 50 grease peddlers. A grease peddler is a man who purchases restaurant grease primarily from hotels, restaurants, and institutions, transports said grease in a truck owned or rented by said grease peddler, from the places where he buys the grease to the plant of a grease processor, and sells said grease to said processor. Grease peddlers are independent businessmen who are engaged in the business of buying, transporting, and selling restaurant grease for their own account. They are not employees of the grease processors.

6. These self-employed peddlers have no established places of business; no employees, except an occasional

loader; no capital investment except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload [fol. 22] the entire collection to one of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

7. Yellow grease is inedible grease produced primarily by removal of most of the water and solid impurities from restaurant grease. Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels, and institutions.

8. The process by which restaurant grease is converted into yellow grease involves the heating of the restaurant grease to a fluid form, and the extraction therefrom of most of the moisture and solid impurities by straining, settling, evaporation, or centrifuging, or a combination thereof. Restaurant grease is customarily converted into yellow grease on the same day it is delivered to a processing plant, or within twenty-four hours. The yellow grease is usually shipped from the processing plant to buyers thereof as soon as sufficient quantity is accumulated to fill a tank truck.

9. During part or all of the period between 1954 and 1959, there were in Los Angeles County, California, eight companies engaged in the production of yellow grease.

10. Six of these producers of yellow grease, hereinafter referred to as processors, acquired from grease peddlers all, or a substantial part, of the restaurant grease from which their yellow grease was made.

11. The names of these six processors, and the periods of time in which they produced yellow grease, are as follows:

B & H Processing Company	1954-1959
Washington Rendering Company	1954-1959
Peterson Manufacturing Co.	1954-1959
Allied Grease & Tallow Co.	1954-1956
Star Grease Company	July 1958-1959
Harbor Industrial Sales	Dec. 1955-April 1956

12. The combination and conspiracy alleged in the complaint primarily involved and directly affected, foreign [fol. 23] trade and commerce in yellow grease produced by the six processors named in paragraph 11 hereof.

13. B & H, Allied, Star, and Harbor Industrial Sales purchased from grease peddlers practically all of the restaurant grease used by them in the production of yellow grease. Washington bought from grease peddlers about four-fifths of the restaurant grease used in its production of yellow grease. Peterson, from May 1956 to August 1958, purchased from grease peddlers about half of the restaurant grease used in its production of yellow grease. The remainder of the restaurant grease used by Washington and Peterson was purchased directly by them from hotels, restaurants, and institutions.

14. The remaining two producers of yellow grease, who operated throughout the 1954-1959 period, were Baker Rendering Company and Western Tallow Processors. They made few, if any, purchases of restaurant grease from grease peddlers and who purchased directly from restaurants, hotels, and institutions substantially all of the restaurant grease used in their production of yellow grease.

15. Baker, Western Tallow, and Peterson, in addition to the production of yellow grease, also collected and processed suet and packing and poultry house by-products into tallows and fertilizers. Washington also collected and processed poultry by-products into animal feeds.

16. For many years Baker, Western Tallow, Peterson, and, to a lesser extent, Washington, used the services of employee-truck driver members of defendant Union under union contracts, to pick up and transport the restaurant

grease and other meat waste purchased by them directly from hotels, restaurants, and institutions. Such purchases and collections were usually made from larger establishments, and grease peddlers usually acquired restaurant grease from smaller establishments and other sources where the supply of restaurant grease was relatively small or irregular in availability.

17. The processors usually sell yellow grease under con- [fol. 24] tracts calling for deliveries of specified quantities on future dates, from 30 to 60 days after the execution of the contracts. The processors then purchase restaurant grease in order to produce the yellow grease they have already contracted to sell and deliver.

18. A substantial part of the yellow grease produced by those processors who purchased restaurant grease from grease peddlers was sold by said processors either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries.

19. A substantial amount of yellow grease produced by Peterson was sold and shipped by Peterson directly to buyers in foreign countries. A substantial amount of yellow grease produced by Washington, B & H, Allied, Star, and Harbor Industrial Sales was sold to Baker Rendering Company and Pacific Vegetable Oil Corporation, and nearly all of the yellow grease so sold to those companies was sold and shipped by them to buyers in foreign countries without further processing or change in composition or form. The yellow grease so purchased by Baker and Pacific Vegetable Oil was purchased with intent to use said yellow grease in filling orders from foreign countries, and was in fact so used.

20. Nearly all yellow grease sold to Baker Rendering Company and to Pacific Vegetable Oil Corporation is delivered by the processors by tank trucks to storage tanks of the buyers located on piers in the Wilmington or Long Beach harbors. The yellow grease so delivered is transferred from said storage tanks into ships for transportation to foreign countries as soon as sufficient quantities are accumulated to fill orders from foreign buyers. The

yellow grease so shipped to foreign countries undergoes no processing or change in form or composition after delivery at the piers, except sufficient heating to facilitate its transfer from storage tanks to ships.

21. Within the period from January 1957 to February 1959, Washington, B & H, Star, and Peterson produced about 27,000,000 pounds of yellow grease, of which more than 10,000,000 pounds were sold and shipped in foreign [fol. 25] commerce. In addition, substantial amounts of yellow grease were produced by Baker and Western Tallow Processors.

22. Within said period, Washington, B & H, Star, and Peterson purchased from grease peddlers over 23,000,000 pounds of restaurant grease, exclusive of the amount of restaurant grease purchased by Peterson from peddlers in 1957, the amount of which is unknown. In addition, substantial amounts of restaurant grease were acquired by Baker, Western Tallow Processors, Peterson, and Washington directly from hotels, restaurants, and institutions through employee-drivers.

23. The purchase, transportation, and sale of restaurant grease by peddlers, the production of yellow grease by processors from restaurant grease purchased by them from peddlers, and the sale of said yellow grease for shipment in foreign commerce, are integral and essential parts of the flow of yellow grease in foreign commerce. Any restraint on or disruption in, or interference with, the purchase of restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of restaurant grease by peddlers, and the purchase of restaurant grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce. Any restraint upon, or interruption of or interference with the purchase of restaurant grease from peddlers by processors, or the delivery of restaurant grease by peddlers to processors, necessarily directly restrains and affects the production of yellow grease by said processors and its flow in foreign commerce.

24. Beginning in the fall of 1954 and continuing thereafter to and including the month of May 1959, defendant Union, certain of its officers and employees, including defendant Singer, a majority of the grease peddlers in Los Angeles County, California, including defendants Taylor, Brandt, and Klein, and certain processors, all engaged in a combination and conspiracy to suppress and eliminate competition among and between grease peddlers in the [fol. 26] purchase and resale of restaurant grease, and to suppress and eliminate competition among and between processors in the purchase of restaurant grease from peddlers.

25. In the years 1952 to 1954, the level of prices paid to peddlers by processors for restaurant grease, and the prices received by processors for yellow grease, had fallen to less than half of the prices that had prevailed for several preceding years. The incomes of peddlers were substantially reduced, and as a consequence, peddlers sought to increase their volume of grease to maintain their incomes. This led to intensive competition among peddlers, both as to prices offered to hotels and restaurants, and attempts of many peddlers to take over the grease producing accounts or "stops" of other peddlers.

26. In or about the early fall of 1954, defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership in said union, representatives of the union, including defendant Singer, proposed the following general plan or program: The union would increase the profits of the grease peddlers by increasing the margin between the prices paid by said peddlers for restaurant grease and the prices they would be paid by processors; that grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; that the processors would be required to deal only with those grease peddlers who were members in good standing in the union; and that unless grease peddlers became members of the union, they would have no place to sell their restaurant grease and would be forced out of business.

27. At a meeting of about ten peddlers in October 1954, Singer urged the peddlers to become members of defendant Union. He said that the grease buyers had organized in New York City and that routes had been assigned among the peddlers so that each one had his own route, competition for accounts had been eliminated, and each peddler could reduce the price he paid for grease without fear that [fol. 27] his account would be taken over by another peddler. Singer said that if the peddlers would join defendant Union, the same arrangement would be worked out in Los Angeles, and that everyone would have to go along or be put out of business by the Union.

28. In or about the month of October 1954, a majority of the grease peddlers in Los Angeles County, including defendants Taylor, Brandt, Klein, and Carlis, joined the defendant Union and became parties to and agreed to engage in the program which had been proposed by defendant Singer and other union representatives as set forth in paragraph 26, above.

29. At or about the same time, defendant Singer informed processors B & H and Allied that they would not be permitted by the defendant Union to purchase grease from non-union peddlers, and that if they did so, the union grease peddlers would not sell restaurant grease to them, and they would be picketed by the union. At that time B & H and Allied agreed with defendant Singer that they would not purchase restaurant grease from non-union peddlers, thereby becoming parties to the combination and conspiracy alleged.

30. During the entire period from October 1954 to May 1959, inclusive, the grease peddler members of defendant Union were established and recognized by defendant Union as a group or segment separate and distinct from employee members of defendant Union. Throughout the said period, meetings of the grease peddler members of defendant Union were called by defendant Singer or Al Menard, secretary-treasurer of defendant Union, and said meetings were held, separate from meetings of employee members of defendant Union. In April 1955, the grease peddler members of defendant Union were placed in a division of

defendant Union named Local 626-B. The great majority of the grease peddlers in Los Angeles County, California, were members of defendant Union from 1954 to 1959, inclusive.

31. From the month of October 1954 to the month of May 1959, inclusive, defendant Singer was assigned by de- [fol. 28] fendant Union to work with and to conduct the affairs of the grease peddler segment of the union.

32. Beginning in or about the month of November 1954 and continuing thereafter to the year 1957, defendant Singer determined the prices to be paid by processors to peddlers for restaurant grease and the processors agreed to and did pay the prices so fixed and determined by defendant Singer.

33. Throughout the period from October 1954 to May 1959, inclusive, grease peddler members of defendant Union were instructed by defendant Singer to refrain from soliciting, or buying restaurant grease from, the accounts of other peddlers, and the grease peddler members of defendant Union agreed so to do.

34. During said period defendant Singer allocated accounts among union grease peddlers in all instances in which there were disputes as to said accounts, and defendant Singer, in conjunction with the committee, and sometimes with approval of the grease peddler segment of defendant Union, imposed fines or suspensions on grease peddler members failing to adhere to such allocations or who solicited or purchased grease from the accounts of other peddlers. During the period of such suspensions, the suspended grease peddlers were prohibited and prevented from selling their grease to processors.

35. From time to time, Singer allotted territories to various Union peddlers, and told other peddlers that they must stay out of those territories. Certain peddlers were suspended from the Union for failure to follow these instructions; and thereby prevented from selling grease to processors.

36. In November 1954, a majority of the Union grease peddlers formed a trade association named Los Angeles

Grease Buyers Association, to help to improve the condition and standing of peddlers, by eliminating the theft of grease and adherence to a code of ethics. The association had no procedure under which it was able to discipline members or enforce adherence to its activities. In March [fol. 29] 1955, at a meeting of Union peddlers, defendant Singer told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do. He referred to the prosecution of rubbish collectors and a man named Matula, and said that this showed the danger of acting through an association as against action through a union. As a result of this meeting, the association became defunct.

37. In February 1955, defendant Singer called a strike against Washington Rendering Company, and established around the plant of said company a picket line composed of grease peddler members of defendant Union, because it had purchased restaurant grease from a grease peddler who was not a member in good standing in defendant Union. The plant was completely closed down because of this strike and picket line. Defendant Singer demanded that Washington agree not to make any further purchases of restaurant grease from any grease peddler who was not a member in good standing of defendant Union, as a condition to lifting the strike and removing the picket line. The strike was lifted and the picket line was removed when Washington agreed that it would not buy restaurant grease from non-union grease peddlers, and thereby became a party to the combination and conspiracy alleged.

38. In March 1955, Singer and Mike Grancich, business agents of defendant Union, went to the plant of a man named Schrader who was engaged in the processing of fish oils and told him that unless he stopped buying grease from two non-union peddlers, he would have union trouble. Schrader complied with this demand.

39. In 1955, Singer asked Sam Stone, owner of Allied Grease and Tallow Company, to write a $100 check to defendant Union to pay the initiation fee of a peddler named Galerkin, who theretofore had been a non-union peddler

and who had agreed to join the Union if he would thereby be enabled to sell his grease to processors. Mr. Stone issued [fol. 30] the check. Galerkin was admitted to defendant Union, and began selling grease to Allied.

40. In November 1955, defendant Singer called a strike against Baker Rendering Company and established around the plant of said company a picket line composed of grease peddler members of defendant Union because said company allegedly had made a purchase of restaurant grease from a peddler who was not a member in good standing of defendant Union.

41. In January 1956, defendant Singer established a picket line around the processing plant of Harbor Industrial Sales, which had entered into the business of processing restaurant grease into yellow grease about the middle of December 1955. Harbor was purchasing restaurant grease from grease peddlers who were not members in good standing of defendant Union. This picket line was maintained for a period of several weeks. In addition, defendant Singer and the grease peddler segment of defendant Union sought to induce the grease peddlers who had been selling restaurant grease to Harbor Industrial Sales to join the union and to stop selling to that company. These efforts were successful and Harbor Industrial Sales ceased operations in April 1956 because of its inability to secure sufficient quantities of restaurant grease to continue its business.

42. Following the establishment of the picket line around the plant of Harbor Industrial Sales in early 1956, defendant Singer told the owner of that business that if he could learn the name of his landlord and the buyers to whom Harbor was selling yellow grease, that he would bring pressure through the Union to have Harbor's lease cancelled and to have the buyers stop dealing with Harbor. Singer said he did not want Harbor in the grease business.

43. In March 1956, the owners of B & H Processing Company were asked by Singer to loan $1,000 to a man named Bernard Kay, who had previously been operating as a non-union peddler, selling grease to Harbor Industrial

Sales, and who had agreed to become a Union member. [fol. 31] With knowledge that Kay was a poor credit risk, the owners of B & H loaned the money to Kay, because of fear of trouble with Singer and defendant Union unless they did so. Kay stopped selling to Harbor Industrial Sales and sold his grease to B & H for several weeks. The loan was never repaid.

44. In July 1958, a new company named Star Grease Company engaged in the processing of restaurant grease into yellow grease. A number of peddlers who had previously been selling restaurant grease to B & H Processing Company began to sell to Star Grease Company. As a result of this competition for the business of peddlers, the prices paid by processors for restaurant grease were increased.

45. At a meeting of the grease buyer segment of defendant Union in late August 1958, defendant Singer announced that thereafter no grease peddler would be permitted to pay more than one cent per pound for restaurant grease. This price of one cent constituted a substantial reduction from the prices which the peddlers had been paying for restaurant grease. At this meeting, defendant Singer gave instructions that all Union peddlers were to cease the sale of restaurant grease to Peterson Manufacturing Co. All grease peddlers who had been selling to said company immediately ceased such sales and thereafter made no sales of restaurant grease to Peterson. At this meeting, defendants Taylor, Brandt, and Klein were appointed members of a committee of the grease buyers segment of defendant Union to assist in policing, enforcing, and carrying out the program to suppress and eliminate competition among grease peddlers and among processors. Early in 1959, upon the resignation of defendant Klein from said committee, defendant Carlis was appointed as a member of said committee, and served thereafter to and including the month of May 1959.

46. Following the instructions given by Singer in late August 1958, that Union peddlers were to stop selling, [fol. 32] grease to Peterson Manufacturing Co., Singer told the president of that company that the purpose of the

Union was to improve the lot of peddlers and the processors buying from peddlers, and that the peddlers would not be permitted ever again to sell to Peterson. Following that conversation no Union peddler in good standing has ever sold grease to Peterson, even following the filing of the complaint.

47. Some of the grease peddlers who had been selling to Peterson transferred their restaurant grease sales to Star and to B & H, but a major part of the volume of restaurant grease which had previously gone to Peterson was transferred to Washington. Star appealed to defendant Singer and the grease peddler members of defendant Union to take action to cause more of the peddlers to transfer their business to Star.

48. In September 1958, Singer asked B & H Processing Company to help out Star Grease Company, which he said was having trouble selling its grease, by selling for Star about 80,000 pounds of grease. B & H sold this grease for Star, because they feared they would have trouble with Singer and defendant Union if they refused.

49. In early September 1958, defendant Singer was on a trip to Hawaii. During his absence, Star and B & H requested the union committee to reduce the price to be paid by processors to peddlers for restaurant grease. The committee refused to take action, and the owner of Star made a trip to Hawaii, financed in part by B & H, to appeal to defendant Singer for favorable action on the requested reduction in prices paid by processors to peddlers for restaurant grease. Defendant Singer agreed to take action on the request upon his return to Los Angeles.

50. Following his return, at a meeting of the grease peddlers' segment of the union on September 18, 1958, defendant Singer called for a discussion of prices to be paid for restaurant grease by processors to peddlers. Defendant Singer then announced that the price would be reduced by ¾ cent per pound, effective on September 19, 1958. Begin- [fol. 33] ning on September 19, B & H, Star, and Washington all reduced their prices ¾ cent per pound, and continued thereafter to pay this reduced price.

51. At the meeting on September 18, 1958, objections were made by some peddlers to the ruling that peddlers could not pay more than one cent per pound for restaurant grease, and a question was raised as to illegality of such a ruling. Defendant Singer emphatically stated that the one cent price was to be strictly followed, and that any peddler paying more would find himself in trouble. Singer said it would do no good for anyone to appeal to the federal or local governments, because the union had plenty of money and would fight any effort to interfere with the union's activities.

52. At a meeting of the grease peddlers' segment of the union on October 15, 1958, a complaint was made against a peddler for trying to get a price for restaurant grease from a processor higher than the reduced price fixed by defendant Singer on September 18. The peddler was sentenced by defendant Singer to a suspension of one month. Another peddler was accused of paying more than one cent per pound for restaurant grease and was called upon by defendant Singer for an explanation. One week later this peddler was suspended for six months by defendant Singer, and was put out of business.

53. At the meeting on October 15, defendant Singer announced that he intended to divide the sales of restaurant grease by peddlers equally between the three processors, and he called a meeting on October 16, 1958, to be attended by himself, the union committee, and the processors.

54. The meeting on October 16, 1958, was attended by defendants Singer, Taylor, Klein, and Brandt, and by owners of B & H and Washington. Defendant Singer announced that he was representing Star Grease Company. The processors were required to submit information concerning the volume of grease which they were purchasing from each peddler. The committee and defendant Singer reviewed [fol. 34] these data and decided that certain peddlers would be shifted from Washington and B & H to Star in order to put all three processors on an approximately equal basis in the volume of grease purchased by them from peddlers. Defendant Singer announced the names of those peddlers

who had previously been selling grease to Washington and B & H who would be required thereafter to sell to Star.

55. Immediately after this meeting, those peddlers named by defendant Singer were notified by the union committee of the action taken, and they ceased to sell grease to Washington and B & H and transferred their business to Star. Washington and B & H lost a substantial volume of grease from grease peddlers, with resultant reduction in their production and sales of yellow grease, and the grease sold by grease peddlers to these processors was so divided and allocated that each of the three processors thereafter got approximately one-third of the restaurant grease sold by grease peddlers.

56. During the period from August 29 to the end of 1958, defendant Singer, and the union committee composed of defendants Taylor, Brandt, and Klein, made investigations and conducted hearings on complaints that union peddlers had solicited accounts of other peddlers, and had paid more for restaurant grease than the one cent maximum fixed by defendant Singer. Several peddlers were suspended for a month for violation of these orders. During the period of said suspensions, the suspended grease peddlers were prevented from engaging in the business of buying and selling restaurant grease.

57. In late 1958, Peterson made a purchase of grease from a peddler who had been suspended from the Union and Mike Grancich, business agent for defendant Union, called Peterson and said to stop buying grease from the peddler or Peterson would have labor trouble. Peterson complied with this demand because it wanted to avoid labor trouble.

58. In February 1959, after the owner of Washington Rendering Company publicly testified in a Congressional [fol. 35] Committee concerning the aforesaid activities of defendant Singer and the defendant Union, several union peddlers, including defendants Taylor and Klein, stopped selling restaurant grease to Washington. Thereafter, for the first time since 1955, Washington made purchases of restaurant grease from non-union members. The union

committee, at that time composed of Taylor, Brandt, and Carlis, arranged to have the trucks of said non-union peddlers followed to each of their accounts and subjected said non-union peddlers to harassment and threats of physical injury.

59. On May 12, 1959, a strike was called by defendant Union against Washington Rendering Company and a picket line was established by defendant Singer around the plant of said company, which picket line was composed primarily of grease peddler members of defendant Union. This strike continued for more than two months and virtually stopped the yellow grease business of Washington.

60. The strike was called ostensibly on the ground that Washington Rendering Company did not have a labor contract with defendant Union. In fact, the strike was called in reprisal against the owner of Washington Rendering Company for his opposition to the above-described activities of defendant Union. The strike was subsequently declared by the National Labor Relations Board to be an illegal strike.

61. On the same day that the complaint herein was filed on May 27, 1959, an indictment was returned against defendant Union and defendants Singer, Taylor, Brandt, and Klein, charging violation of the antitrust laws in substantially the same terms as are charged in this complaint. In June 1959, while the plant of Washington Rendering Company was closed down because of the strike by defendant Union, defendant Singer spoke to Morris Gurewitz, proprietor of Washington Rendering Company. Singer blamed Gurewitz for having caused the indictment by testifying before the Senate Committee. Singer said that the Union could keep the strike going against Gurewitz for years.

62. During the pendency of a motion by the National [fol. 36] Labor Relations Board in the United States District Court for the Southern District of California for an injunction against the strike, defendant Singer told Morris Gurewitz that although the Court might issue a 30- or 60-day injunction against the strike, when that time was

up the defendant Union would have Gurewitz right back where he was before. Singer referred to the loss of business suffered by Gurewitz as a result of the strike, and told Gurewitz that his troubles with the Union were not over and would get worse. Singer said that Gurewitz also had employees in other unions and that if Gurewitz got an injunction against defendant Union, he would have trouble with other unions.

63. In October 1959, Singer boasted to Gurewitz about the trouble which had been caused Gurewitz by Singer and the Union, and said that Gurewitz would have more trouble. Singer said that even if he had to go to jail, the unions would keep Gurewitz in hot water, and that there were plenty of other people in the Union to take care of Gurewitz. Singer said that when the Union was through with Gurewitz, then it would start in on Ben Cohen, of B & H Processing Company, who had also testified before the Senate Committee.

64. During the course of the proceedings in the companion criminal case, resulting in pleas of *nolo contendere* by defendants Union, Singer, Taylor, Brandt, and Klein, the Government disclosed in a statement filed with the Court the activities of defendant-Singer, and the committee composed of defendants Taylor, Brandt, Klein, and Carlis, described in detail in the foregoing paragraphs of this stipulation. At no time has defendant Union taken any disciplinary action against defendant Singer or the members of the committee, or terminated the existence of the committee, or expelled from membership in the Union any of said defendants or other grease peddlers.

65. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to make use of peddlers for strike breaking purposes.

[fol. 37] 66. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the acquisition of restaurant grease.

67. Since this case was filed, defendant Union submitted statements to the Court in the companion criminal case,

signed by numerous peddler members of said Union, stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease and paying too much for restaurant grease. These peddlers expressed their conviction that defendant Union is the only organization capable of accomplishing these results for them. The statements of each of these peddlers referred to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to any benefit which might be derived by any employees of processors by reason of peddler membership in the Union.

68. Every processor of yellow grease in the Los Angeles area has employees who are members of defendant Union.

69. There are in operation at the present time in the Los Angeles area only two processors of yellow grease who make any regular or substantial purchases of restaurant grease from peddlers—B & H Processing Company and Star Grease Company. William Sanders, owner of Star Grease Company, is a member of defendant Union. Henry Cohen, a partner in B & H Processing Company, is a member of defendant Union.

70. From the time it commenced business in July 1958, to the present time, Star Grease Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the filing of the complaint herein, Star has continued to follow this policy and practice.

71. From the fall of 1954 to the present time, B & H Processing Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the complaint was filed [fol. 38] herein, B & H has consistently refused to purchase grease from non-union peddlers.

72. Between October 1954 and January 1958, defendant Union, as a chartered affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, was subject to the provisions of the Con

stitution, a copy of which is attached hereto as Exhibit A, and from January 1958 to the present time, said defendant Union was subject to the provisions of the Constitution, a copy of which is attached hereto as Exhibit B.

It Is Further Stipulated that the allegations of paragraphs 1 to 29, inclusive, of the complaint herein are admitted by defendants and require no proof; that the activities of defendants and their co-conspirators as alleged in paragraphs 26 and 27 of the complaint and as described in the facts hereinbefore admitted, constitute a direct, substantial, and unreasonable restraint upon and interference with foreign trade and commerce in yellow grease; and that the defendants unlawfully combined and conspired in unreasonable restraint of foreign trade and commerce in yellow grease in violation of Section 1 of the Sherman Act.

There are no issues of fact remaining to be litigated upon trial.

It Is Further Stipulated that the Court may make findings of fact and conclusions of law on the basis of the foregoing admissions, and that the Court may enter judgment that the defendants have violated Section 1 of the Sherman Act as charged in the complaint.

It Is Further Stipulated that defendants admit that plaintiff is entitled to relief in this action and that the Court may enter a final judgment or decree herein containing injunctive relief of the general nature of that sought in paragraphs 2 and 3 of the prayer of the complaint.

The effect of the admission by defendants of each and all of said foregoing facts and conclusions of law is limited to this action only, and said admission is for the purposes of this action only, and neither constitutes an admission [fol. 39] by defendants for any other purpose nor may be used against defendants in any other proceeding.

It Is Further Stipulated that the sole remaining issue in this case is whether the decree to be entered by the Court herein should embody relief of the nature sought in paragraphs 4 and 5 of the prayer in the complaint, relating

to termination of the membership of peddlers in defendant Union and their participation in affairs of said Union.

It Is Further Stipulated that the parties will request permission of the Court to serve and file memoranda setting forth their respective positions and arguments on said remaining issue of relief, to file rebuttal memoranda, and to present oral argument to the Court thereon.

Dated this 23d day of March, 1961.

George B. Haddock, Maxwell M. Blecher, Attorneys for Plaintiff.

Charles K. Hackler, Attorney for Defendants Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis.

It Is So Ordered this 23d day of March, 1961.

Wm. M. Byrne, District Judge.



Constitution

International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America

17 17

Affiliated with the American Federation of Labor

Adopted at the Convention Held in Los Angeles, Calif., October 13 to October 17, inclusive, 1952.

Preamble

As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the members of a craft can best be protected and advanced by their united action in one great labor organization, we have organized the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and are chartered by the American Federation of Labor, and adopt the following Constitution.

CONSTITUTION
of the
International Brotherhood of
Teamsters, Chauffeurs,
Warehousemen and Helpers

Article I

Name

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Objects

Sec. 2. To organize under one banner all workmen engaged in the craft, and to educate them to cooperate in every movement which tends to benefit the organization; to impress upon our membership, our employers, and the public that it is to the advantage of all concerned that workers be organized; the organization of our craft requires honest and intelligent membership, adapted to the business; we teach our membership the advantage, benefits and importance of their industrial position, and we endeavor to build up and perfect a labor organization in conformity with the highest standards of our American and Canadian citizen-

ship; we seek to improve the industry by increasing the efficiency of the service and by instilling confidence, good will and understanding between our membership and their employers, which will have the effect of preventing unnecessary conflicts or serious misunderstandings between the membership and their employers, and which will further encourage cooperation and fair dealing with all employers so as to secure for our membership reasonable hours, fair wages and improved working conditions.

Article II

JURISDICTION, MEMBERSHIP, AND ELIGIBILITY TO OFFICE

Jurisdiction

Section 1. This organization has jurisdiction over all teamsters, chauffeurs, warehousemen and helpers; all who are employed on or around horses, harness, carriages, automobiles, trucks, trailers, and all other vehicles hauling, carrying, or conveying freight, merchandise, or materials; automotive sales, service and maintenance employees, garage workers and service station employees, warehousemen of all kinds employed in warehouse work, stockmen, shipping room employees, and loaders, that is persons engaged in loading or unloading freight, merchandise, or other materials on to or from any type of vehicle; all classes of dairy employees, inside and outside, including salesmen; brewery and soft drink workers; workers employed in ice cream plants; all other workers employed in the manufacture, processing, sale and distribution of food, milk, dairy, and other products; all truck terminal employees; cannery workers; and other workers where the security of the bargaining positions of the above classifications requires the organization of such other workers.

Membership

Sec. 2. (a). Any person of good moral character, employed in the craft or the various employments over which this International has jurisdiction, shall be eligible to membership in this organization. Provided, that hereafter no person shall be eligible for membership in this organization who has not declared his intention to become a citizen of the United States, if a resident of the United States, or of Canada, if a resident of Canada; or who, having declared such intention, has permitted same to lapse.

(b). * Persons who own, lease or operate a team or vehicle and perform work under the jurisdiction of this International Union may be eligible for membership in this International Union.

(c). If, however, any local union can prove to the satisfaction of the General President or the General Executive Board that the admission of such individuals would be detrimental to the welfare of the local union, it may present such facts to the General President or the General Executive Board for authority to refuse to accept such persons as members. The General President shall consider all the facts and circumstances submitted by the local and render a decision in the matter, which shall be binding on such local.

(d). The foregoing provision shall apply with equal force to so-called "venders", and "owner-equipment drivers." A "vender" is a person who purchases products and sells the same on his own behalf. An "owner-equipment driver" is a person

* Sections 2(b), 2(d) and 2(g) of this Article, as they were amended at the 1952 Convention, were subsequently further amended by action of the General Executive Board pursuant to the power vested in it under former Section 2(h) of this Article (here Section 2(g)), such amendments being effective as of December 2, 1952 and appearing as set forth in this printing of the Constitution.

who, in connection with his employment, uses equipment sold or leased to him by his employer or equipment which he has purchased independently but which he uses in whole or in part in the service of his employer. When such persons apply for membership in the International, the local and the International shall have the right and authority as a condition precedent to membership to approve or disapprove of any contract pertaining to such form or similar form of employment.

(e). All contracts hereafter renewed or entered into, pertaining to such form or similar form of employment, shall likewise be subject to such approval or disapproval of the local and International. If, in the judgment of the local or International, such employment contract will constitute a reduction in the union wage scale then prevailing for such service without "owner equipment," the same shall not be approved by the local and such persons shall be ineligible to membership or, if a member, shall cease to work under such conditions or be subject to suspension or expulsion by the local or International.

(f). The General President, when he deems it advisable for the best interests of the International Union, and upon the recommendation of the local union, may allow a person to own more than one team or vehicle and hold membership, provided he hires and employs none but members of the International Union and that he drives a vehicle himself and conforms to the prevailing rate of wages, hours and working conditions of the local union in the locality.

(g). The General Executive Board is empowered when necessity arises to change, alter and amend any provision of paragraphs (b) through (f) inclusive of this section.

Subversive Elements Barred From Membership

Sec. 3 (a). No member of the Communist Party or other subversive organization, nor any person who subscribes or lends support to their doctrines, shall be allowed to hold membership in any local union of the International organization. If by false statements such individual has obtained membership he shall be expelled. It is not necessary that the individual charged with membership in the Communist Party or other subversive organization admit his membership in said party or organization. If the local executive board, by majority vote, is satisfied by the evidence presented that the individual is a member of the Communist Party or of any other subversive organization, or subscribes or lends support to their doctrines, the local executive board shall expel such individual after he has obtained a proper trial, in accordance with our laws.

(b). The action of the local executive board is final and binding, with the understanding that either party has the right to appeal in accordance with this Constitution and subject to the following provision:

(c). If, in the opinion of the General President, the above section has not been complied with in principle and intent by the local union or its executive officers, he or someone appointed by him or acting for him, shall be empowered to reopen and review the case and, if he deems it advisable, he or his representative shall be empowered to transfer the case to the General Executive Board. If the General Executive Board returns a decision of guilty, the decision shall be final and binding.

Eligibility to Office

Sec. 4. To be eligible for election to any office of a local union or the International Union a member must be in continuous good standing for a period of two years prior to nomination for said office and must have worked at the craft as a member for a total period of two years. This does not apply to officers of newly organized local unions, except as follows: In local unions organized for less than two years an individual must be a member and in continuous good standing and must have worked at the craft as a member for at least half of the period of time since the local union was chartered by the International Union. The requirement of having worked at the craft as a member shall not be construed to prevent any member holding local union office at the time of the 1952 convention from continuing in office for the balance of the term thereof, or to prevent him from being eligible for subsequent elections to office in a local union or to election for office in the International Union. To be eligible to hold office in a local union a member must be a citizen of the country in which his local union is located. Officers under this section shall also include members of local executive boards, business representatives of local unions, delegates to central bodies, and delegates to all conventions of labor.

Article III

CONVENTION AND REPRESENTATION

Conventions

Section 1. The conventions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers shall be held in 1957 and thereafter

every five years at such time and at such place as may be designated by the General Executive Board upon the recommendation of the General President. The International Secretary-Treasurer shall issue a call for the convention not less than two (2) months prior to the date of meeting. In the event of a grave emergency as determined by the General Executive Board which prevents the holding of a convention in accordance with the provisions herein set forth, the same shall be held as soon thereafter as possible, in accordance with the intent and spirit of this Constitution.

Basis of Representation

Sec. 2. Each local union having seven hundred and fifty (750) members or less shall be entitled to one delegate, and one delegate for each additional seven hundred and fifty (750) members or majority fraction thereof, but in no case shall a delegate have more than one vote. No proxy vote will be allowed.

Requisites for Representation

Sec. 3. (a). No local union shall be entitled to representation in the convention that has not been chartered, affiliated and in good standing for 6 months prior to the opening of the convention, and each local union to be entitled to said representation must have paid into the international treasury six consecutive months' per capita tax.

(b). All moneys due the International Brotherhood, whether by per capita tax or otherwise, must be received at least three days prior to the opening of the convention.

(c). The General Executive Board is empowered to grant full representation to any union which has been affiliated with the International Brother-

hood of Teamsters for less than six months when such local union was formerly an independent union or was formerly affiliated with a union other than the International Brotherhood of Teamsters.

Expenses of Delegates

Sec. 4. Each local union shall pay the expenses of its delegates to the International convention.

Election of Delegates and Alternates

Sec. 5. All delegates to the International convention shall be selected by vote at a regular meeting of the local union, or such delegates may be appointed by the executive board of the local union if so authorized by a vote of the local union membership at a regular meeting. All convention delegates, except substitute delegates, shall be selected during the period from the receipt by the union of the convention call up to the thirtieth day preceding the first day of the convention. In the event of disability of a delegate selected by a local union to attend the convention, the executive board of that local union may appoint a substitute to replace such delegate. Each delegate or substitute must be an active member working at the craft. This, however, must not be construed so as to bar the election of salaried officers of local unions or officers of the International Union. All International officers and organizers who have worked continuously for one year or more shall be entitled to all the privileges of regularly credentialed delegates; provided that this shall not be construed to make eligible for International Office an organizer who is not otherwise eligible through having worked at the craft for such a length of time as to have made him eligible for International office as in this Constitution provided.

Credentials

Sec. 6. (a). The secretary-treasurer of each local union shall, immediately after the election of delegates, forward their names to the General Secretary-Treasurer, who shall publish a list of delegates. Each delegate shall present his credentials, properly signed by the president and secretary-treasurer, and the seal of the local union shall be impressed thereon. He shall also present his membership card, establishing that he is a member in good standing and entitled to a seat in the convention.

(b). All credentials must be in the General Office thirty (30) days prior to the opening of the convention.

Committee on Credentials

Sec. 7. (a). The General President shall, preceding each convention, appoint from the delegates-elect a committee of seven, no two from any one state or province, to act as a committee on credentials. Said committee shall meet at the place of holding the convention five days prior to the opening of the convention. The General President or his representative and General Secretary-Treasurer shall also be members of said committee. To this committee shall be referred all credentials. This committee shall have its report in writing ready for the convention when it opens.

(b). The seven appointive members shall receive as compensation for the extra five days' service the same remuneration for services as is paid to the General Executive Board members and organizers, including regular hotel expenses.

Amendments to Constitution; Resolutions

Sec. 8. (a) Thirty (30) days prior to each convention, local unions, members in good standing, or the general officers shall have the right to send to the General President of the International Union proposed amendments or additions to the Constitution, or resolutions, which shall be submitted to the Committee on Constitution when it meets. This shall not deprive delegates to the convention of their right to propose amendments or additions to the Constitution, or to submit resolutions during the sessions of the convention in accordance with rules governing the convention.

(b). Amendments to the Constitution shall be adopted by a two-thirds vote of the delegates present in convention assembled. Duly adopted amendments to the Constitution shall become effective as of the first day of December following the close of the convention unless otherwise specified in any particular amendment adopted by the convention.

(c). The General Executive Board shall have the power, following convention adoption of amendments to this Constitution but prior to printing thereof, to make such corrections, typographical, grammatical, punctuational or otherwise, including the supplying or remedying of inadvertent omissions or errors, as are necessary to carry out the spirit and intent of any amendments so adopted.

Quorum

Sec. 9. A quorum shall consist of a majority of the delegates seated in the convention.

Article IV

OFFICERS, DELEGATES AND ELECTIONS

International Officers

Section 1. (a). The officers of the International Brotherhood shall consist of a General President, General Secretary-Treasurer, eleven Vice-Presidents, and three Trustees. The General President, eleven Vice-Presidents and General Secretary-Treasurer shall constitute the General Executive Board.

(b). Vice-Presidents shall be known as first, second, third, etc., in accordance with the date of their election or their appointment.

(c). Not more than two officers from any one city can be elected to hold a position entitling him to a seat on the General Executive Board. The officers of the International Union shall as near as practicable be uniformly distributed throughout the entire country.

Election of Officers and Delegates

Sec. 2. The election shall be in charge of a Committee on Rules appointed by the President of the convention, and all officers shall be installed on the last day of the convention and assume their official duties on December 1, following the adjournment of the convention. All nominations for International officers shall be made in open convention and elections shall be by roll call where there is more than one candidate for any office. It shall require a majority of all votes cast to constitute an election; at every unsuccessful ballot the candidate receiving the lowest number of votes shall be dropped until an election takes place. This shall not apply to Trustees or American Federation of Labor delegates, but in their election each delegate must vote for three candidates for Trustees and

the number of American Federation of Labor delegates decided upon by the convention, and the candidates receiving the highest number of votes shall be declared elected.

Delegates to Conventions of American Federation of Labor; Reports; Expenses; Unit Rule

Sec. 3. (a). At each convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, there shall be elected as many delegates to the American Federation of Labor conventions as the membership of the International Union permits. Said delegates shall make a full report of said convention to the General Executive Board in writing; and to the general membership through the official Journal within sixty (60) days.

(b). The expenses of the above delegates shall be paid by the International Union, the amount to be determined by the General Executive Board, with fare to and from the convention and no longer time shall be consumed than is necessary to make the trip. The General President and General Secretary-Treasurer shall act as delegates to the convention of the American Federation of Labor by virtue of their offices.

(c). The unit rule shall prevail in all votes cast amongst the delegates representing the International at the American Federation of Labor and department conventions.

Article V

OFFICERS' SALARIES AND EXPENSES

Section 1. (a). The salary of the General President shall be $50,000 per year; the salary of the

General Secretary-Treasurer shall be $50,000 per year.

(b). In the event that the General President or General Secretary-Treasurer leave or relinquish their office, their office shall become vacant, but in the discretion of the General Executive Board they may be continued as advisors to the organization with the title and office of General President Emeritus or General Secretary-Treasurer Emeritus, as the case may be, and in that case their remuneration shall be the same as set forth in subsection (a) above; provided, however, that in the case of the incumbent of the office of General President as of October 1, 1952, he shall at the expiration of his term as General President be continued during his life as advisor to the organization with the title and office of General President Emeritus and as such, shall receive the salary and remuneration set forth in Subsection (a) above and shall, in addition, be entitled to continue to receive and enjoy and shall continue to receive and enjoy all of the benefits and privileges of a monetary nature or value, including but not limited to, those provided for in Section 2 of this Article, enjoyed and received by him as General President. In addition, he shall be authorized and entitled as General President Emeritus to attend and participate in, as a delegate, all conventions of this organization and all conventions of the American Federation of Labor and Departments thereof.

(c). The Vice-Presidents, other than Vice-Presidents who are full time organizers, shall receive a salary of $500 per month as compensation for attending board meetings; and the three Trustees, if not full time organizers, shall receive a salary of $200 per month as compensation for performing their duties as Trustees. When engaged in other

duties under orders from the General President, the Vice-Presidents and Trustees who are not full time organizers shall, in addition, receive the same pro rata salary as organizers.

(d). The person holding the office of Assistant to the General President while working under orders of the General President shall be paid a sum fixed by the General President and expenses as allowed to other executive officers and organizers.

(e). Organizers while working under orders of the General President shall be paid a sum fixed by the General President at a rate not to exceed $20,000 per year.

(f). All executive officers, organizers and others working outside of their home city, or when traveling in the interest of the organization, shall receive their fare in addition to the above named sum to and from their destination, and in addition shall receive a sum of $15 per day for hotel expenses. The General President, General Secretary-Treasurer, organizers and other executive officers of the International shall be allowed $7.50 per day for incidental expenses. All organizers other than special organizers shall be allowed the sum of $150 per month as automobile expenses.

(g). All special organizers' salaries and expenses shall be determined by the General President, subject to the approval of the General Executive Board.

(h). The person holding the office of executive vice-president shall be paid a sum fixed by the General President.

(i). All salaries or powers to establish them shall be determined by the convention prior to election of officers.

Travel Provisions

Sec. 2. The General President, for the purpose of promoting the interests and welfare of the In-

ternational and the making of diplomatic contacts with other organizations and institutions; and for the purpose of conserving his health, may in his discretion travel in this country or abroad and may take periodic rests. The General Executive Board shall provide for all expenses of the General President when performing the services mentioned herein or when taking periodic rests; the said expenses shall include travel in this country and abroad, the full and complete maintenance of his wife so that she can accompany the General President, and all secretarial help and services which he deems necessary while engaged as afore referred to. The expenses provided for herein are in addition to all other constitutional compensation and allowances.

Article VI

GENERAL PRESIDENT—DUTIES AND POWERS

General Duties

Section 1. (a). The General President shall preside at the Convention of the International Brotherhood and conduct the same in conformity with this Constitution. He shall have the deciding vote in case of a tie on any question that is being voted on by the convention, and shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the general officers, subject to the approval of the majority of the General Executive Board.

(b). The General President shall have general supervision over the affairs of the International Brotherhood, which shall be conducted in accordance with the Constitution.

(c). The General President shall devote his entire time to the service of the International Brotherhood.

(d). It is understood, however, that this shall not prohibit or prevent him from accepting a call to service by the government of the United States; and if such call is made and he believes that it is in the best interests of the International Union to accept, his position and remuneration as now outlined in the Constitution shall not be interfered with and shall continue.

(e). The General President may appoint a member of the International to the office of Assistant to the General President, who shall receive a salary for the term of his appointment as set forth in Article V, Sec. 1 (d).

(f). The General President, with the approval of the General Executive Board, shall be empowered to appoint assistants to carry on his work if he deems it necessary.

(g). The General President, when he deems it necessary, may appoint an Executive Vice-President, who shall perform his duties and work under the supervision and orders of the General President.

(h). The General President, when so requested by the executive board of a local union, shall have authority in his discretion to direct that a referendum vote be held by the membership of any local union in respect to any question or situation where a vote of the membership is required either under this Constitution or the Constitution or by-laws of the local union involved.

Judicial Powers

Sec. 2. (a). He shall have authority to interpret the Constitution and laws of the International Union and to decide on all questions of law thereunder, and shall have authority, unless some other procedure is expressly provided in this Constitution, to settle and determine all grievances and disputes submitted

to him by joint councils, local unions and other subordinate bodies, subject to appeal to the General Executive Board and thereafter to the next convention in the manner and to the extent prescribed in this Constitution.

(b). When the General President makes a decision or orders a local union to observe the laws, and the local union refuses, the local union shall be subject to suspension or revocation of charter by the General Executive Board.

Arbitration; Procedure; General President Empowered To Submit Question of Arbitration to General Executive Board When Satisfied That Local Is Not Justified in Rejecting Arbitration

Sec. 3. In any controversy with an employer, not covered by a local union agreement, the local union shall make all reasonable efforts to settle the same through negotiation and, if it fails, through a fair arbitration tribunal. If an employer offers to arbitrate, it shall be optional with the local union to accept or reject such arbitration. However, if the local rejects arbitration and the matter is brought to the attention of the General President, he shall ask the officers or representatives of the local to appear before him or his representative or in some other manner to explain their reasons for refusal. If the General President is satisfied that the local is not justified in refusing arbitration, then the General President shall submit the matter to the General Executive Board, and if the General Executive Board is of the opinion that the local union should arbitrate it may so decide, whereupon the local shall proceed to carry out the decision of the General Executive Board.

Supervision Over Strikes and Lockouts

Sec. 4. He shall determine whether an existing strike or lockout is subject to the payment of strike benefits provided for by this Constitution.

Approval of By-Laws of Locals

Sec. 5. By-laws of local unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President.

Power of General President To Appoint Trustees and Duties and Obligations of Locals Under Trusteeship

Sec. 6. (a). If the General President has or receives information which leads him to believe that any of the officers of a local union or other subordinate body, are dishonest or incompetent, or that such organizations are not being conducted in accordance with the Constitution and laws of the International Brotherhood or for the benefit of the membership, or are being conducted in such a manner as to jeopardize the interests of the International Brotherhood, he may appoint a temporary Trustee to take charge and control of the affairs of such local union or other subordinate body; provided, however, that upon the appointment of such temporary Trustee the General President shall set a time and place for a hearing for the purpose of determining whether such temporary trusteeship shall forthwith terminate or continue, which hearings shall commence within thirty days after the appointment of such temporary Trustee. Adequate notice, at least ten days prior to the date of hearing, shall be given to the local union or other subordinate body involved. In the case of all hearings conducted pursuant to or after

the establishment of a trusteeship, the General President shall have power to deputize a representative to act for him in such matter. Such representative shall make his recommendations to the General President, orally or in writing within ten days after the completion of the hearing, and the decision in the case shall be made by the General President himself, which decision shall be made within ten days after such recommendations are received by him and such decision shall be promptly transmitted to the local union or other subordinate body. Appeals from determinations following such hearings may be taken directly to the General Executive Board. Appeals from decisions of the General Executive Board may be taken to the convention by the local union or subordinate body affected. Procedures on appeals under this Section, insofar as is consistent with this Section, shall be governed by the provisions of Article XVIII.

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the local union or other subordinate body, to remove for the period of his trusteeship any or all officers and appoint temporary officers during his trusteeship, and to take such other action as in his judgment is necessary for the preservation of the local union or other subordinate body and their interests. He shall report from time to time on the affairs and transactions of the local union or other subordinate body to the General President. His acts shall be subject to the supervision of the General President. The General President may remove Trustees at any time and may appoint successor Trustees.

(c). The suspended officers shall turn over all moneys, books and property of the local union or other subordinate body to the Trustee, who must receipt for the same.

(d). Temporary officers and trustees must be members in good standing of local unions in good standing. They must give bonds for the faithful discharge of their duties, satisfactory to whoever appointed them, which shall not be less than the amount of money they are apt to handle.

(e). The Trustee shall take possession of all the funds, books, papers and other property of the local union or other subordinate body and tender a receipt for same. He shall pay all outstanding claims, properly proved, if funds are sufficient. If the funds are not sufficient he shall settle the most worthy claims, as his judgment dictates, unless otherwise provided for in this Constitution. When the Trustee recommends self-government be restored, or when the local union or other subordinate body involved petitions for such restoration (provided that no such petition shall be presented at intervals of less than six months), and such restoration is approved and ordered by the General President, or when the General President himself directs that self-government be restored, the Trustee shall return all funds, books, papers and other property to the local union or other subordinate body. Hearings on petitions for restoration of self-government shall be accorded and shall be commenced within thirty (30) days after receipt of petition, and shall be held in the same manner as provided in Section 6 (a) of this Article relative to hearings on initial appointment of trustees. In the event the charter of the local union or other subordinate body is suspended or revoked, all its funds, books, papers and other properties shall be forwarded to the General Secretary-Treasurer, who shall hold it in trust for the purpose of reorganization.

Removal of International Organizers

Section. 7. The General President, when he deems it for the best interests of the International, is hereby empowered to remove any International organizer.

Countersign Checks; Approve Bills

Sec. 8. He shall countersign all checks drawn on the International Treasury by the General Secretary-Treasurer in accordance with Article VII, Sec. 6, of the Constitution, and approve all bills for services rendered the International Brotherhood.

Audit of Books

Sec. 9. The General President shall employ an expert public accountant to audit the books of the General Secretary-Treasurer on the 1st of April, July, October and January.

Official Journal

Sec. 10. (a). The official Journal shall be published under the supervision of the General President, subject to the approval of the General Executive Board, and a copy of the same furnished directly to each member in good standing who may furnish his name and address to the General President through the local secretary-treasurer. The General President shall be empowered to employ such help as he may need to carry on this work.

(b). It shall be compulsory upon the local secretary-treasurer to send in the name and address of every member in good standing to the office of the General President, quarterly, in order that the members may receive the magazine and keep the mailing list revised at all times.

Vacancy in Office of General President

Sec. 11. The First Vice-President shall, without additional compensation, assume the duties of the General President in case of the death, disability or resignation of that officer until such time as the General Executive Board shall select a General President, who shall hold office until the next convention. The First Vice-President, within five (5) days after assumption of the duties of General President, shall convene the General Executive Board for the purpose of making such selection.

Article VII

GENERAL SECRETARY-TREASURER—DUTIES AND POWERS

General Duties

Section 1. The General Secretary-Treasurer shall keep a correct record of the proceedings of the convention, preserve all important documents, papers, letters received and copies of all important letters sent by him. He shall conduct all financial correspondence between the International Brotherhood and the local unions. He shall be custodian of all the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Compensation; Bond

Sec. 2. The General Secretary-Treasurer shall receive such compensation as shall be determined by the convention, and he shall give bond to the General Executive Board in such amount as it deems proper for the faithful performance of his duties.

Issuance of Charter

Sec. 3. Application for charters shall be made to the General Secretary-Treasurer, who shall sign, issue and deliver a charter to the local union upon receipt of the following contract, which must be signed by the secretary-treasurer of the local union:

Charter Contract

Know all men by these presents, that I, ..., Secretary-Treasurer of the ..... Local ....., located at ....., being authorized to act for said local, in consideration of the General Secretary-Treasurer issuing a charter to said local, hereby agree: That said charter shall remain the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; and in consideration of the premises herein stated, agree that when charter is framed, the frame shall immediately become the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. Said local union shall have custody of said charter until it is demanded by some person authorized to make such demand, in accordance with this Constitution; and the charter and frame shall then be delivered to the person so authorized to demand and procure the same; and it is further agreed that any person so authorized may enter any premises occupied by the said local or any of its members and take possession and remove the said charter.

I do further recognize and acknowledge in behalf of local..... that the name and all rights and privileges hereunder, are granted this local union by the International Union, and that all

books, documents, contracts, name, moneys, funds and property of any nature and description which may be obtained, accumulated and maintained by this local union will result, be obtained, accumulated or maintained by the granting of this charter and the rights and privileges thereunder, therefore, in the event this charter is revoked, upon such revocation, all books, documents, contracts, name, moneys, funds and property shall belong to and shall be delivered over to the International Union by it to be retained, as provided for in Article X, Sections 15 and 16 thereof, until the charter is reinstated or a successor local or locals are chartered.

I do further agree in behalf of local .... that it will abide by the provisions of the International Constitution and amendments thereto, all of which are incorporated herein by reference.

.....

By its Secretary-Treasurer.

Financial Report

Sec. 4. The General Secretary-Treasurer shall publish a financial statement and furnish the Secretary-Treasurer of each local union with a copy of same, together with a statement of an expert accountant, showing the total amount of receipts and disbursements with the cash balance on hand. He shall also furnish the Secretary of each local union with a revised roster showing the number of unions in good standing. At any time a financial report is demanded by two or more local unions, the General Secretary-Treasurer shall give the locals asking for same the correct amount of money on hand in the International treasury and in the strike or general fund.

Method of Determining Representation

Sec. 5. The General Secretary-Treasurer, on sending out credentials, shall figure from June 30, 1952, to four months preceding the opening date of the next convention to ascertain the per capita tax stamps bought by local unions; the number of delegates given to local unions shall be upon this basis. Where it is not possible to hold the convention at the time prescribed by Article III, Section 1, because of a grave emergency, the additional per capita tax payments involved shall be taken into consideration in computing the average monthly membership for the determination of the number of delegates to which the local union shall be entitled.

Finances

Sec. 6. The General Secretary-Treasurer shall receive all moneys due from local unions and other sources, giving his receipt therefor. All moneys shall be placed in the bank in the name of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, except when otherwise ordered by the General Executive Board, in accordance with Article XVIII, Sec. 8, subject to withdrawal only by the General Secretary-Treasurer and the General President, with the exception of twenty-five thousand dollars ($25,000), subject to withdrawal by check on the signature of the General Secretary-Treasurer for the purpose of paying current expenses. He shall keep a correct financial account between local unions and the International Brotherhood.

Notification of Locals in Arrears

Sec. 7. It shall be the duty of the General Secretary-Treasurer to notify the secretary-treasurer,

the president and the 3 trustees of the local union when said local union becomes in arrears for per capita tax.

Seals; Stamps; Supplies

Sec. 8. (a). The General Secretary-Treasurer shall procure all seals, stamps and supplies and furnish same to all local unions desiring them. (It shall become compulsory upon all local unions to procure, from the general office, with the exception of letter paper and envelopes, all supplies handled by the International Union, as listed from time to time on International order blanks furnished for that purpose.)

(b). Individual members or locals shall not have the power to duplicate the stamps, buttons or paraphernalia issued by the International Brotherhood. Permission may be granted by the General Executive Board to local unions to have stationery and other minor supplies procured in their several localities.

Password

Sec. 9. The General Secretary-Treasurer shall issue the password quarterly.

Other Duties

Sec. 10. The General Secretary-Treasurer shall perform such other duties as are required of him by this Constitution.

Article VIII

TRUSTEES—DUTIES

Audit of Books

Section 1. The Trustees shall audit the books of the General Secretary-Treasurer on the first of

April and October of each year, and report their findings immediately to the General President, and the General President shall, in turn, report to the General Executive Board.

Fiscal Year

Sec. 2. The fiscal quarters of the year shall commence on the first of April, first of July, first of October, and first of January.

Article IX

GENERAL EXECUTIVE BOARD—DUTIES AND POWERS

General

Section 1. Such powers, duties and authority as are not otherwise delegated to the officers of the International shall be exercised, acted upon, and determined by the General Executive Board.

Revocation and Suspension

Sec. 2. (a). Unless otherwise provided in this Constitution, the General President, or General Secretary-Treasurer, when they deem it necessary to suspend or revoke a charter, shall immediately notify the members of the General Executive Board, for their approval of same.

(b). Any local union suspended by the General Executive Board shall lose, for the period of its suspension, all privileges of the International Brotherhood, and the local central labor body shall be notified to exclude its delegates.

Power To Debar From Membership

Sec. 3. (a). The revocation or forfeiture of a charter of a local union for any cause whatsoever shall permit the loss of membership in the Inter-

national Union of all members of the local union whose charter was revoked or forfeited. Upon reorganization of such local union the General Executive Board shall have the power to exclude from membership, in the new local union, persons who were in any way responsible for the revocation or forfeiture of the charter or who, the General Executive Board has reason to believe, are disloyal to the International Union or who may cause disruption in the newly organized local union.

(b). With respect to new applicants to any local union the General Executive Board shall have power to deny membership, in the International Union, to any such applicant when it believes the interest of a local union or the International Union will be best served by so doing.

Trial of Member Assaulting General Officer or Organizer

Sec. 4. Any member or number of members of a local union assaulting or injuring a general officer, or organizer, shall be tried and if found guilty punished by the General Executive Board on such charge in the same manner as hereinafter provided for other trials and punishments by the General Executive Board. If he is found not guilty, his expenses to the place of the General Executive Board meeting shall be paid by the General Office. If he is found guilty he shall be disciplined as the judgment of the General Executive Board dictates and his expenses shall not be paid. If he desires not to attend his trial, he may submit his answer or defense in writing to the Board.

Meetings of General Executive Board

Sec. 5. The General President, and in his absence the General Secretary-Treasurer, and in the absence

of the General President and the General Secretary-Treasurer, the First Vice-President of the International Brotherhood shall have the power to call a meeting of the General Executive Board whenever, in their judgment they deem it necessary. Upon the written request of a majority of the General Executive Board it shall be the duty of the General President to call a meeting of the General Executive Board. A majority of the members of the General Executive Board shall constitute a quorum for the transaction of its business.

Action When Not in Formal Session

Sec. 6. In all matters requiring action by the General Executive Board, and when the General Executive Board is not in formal session, the General Executive Board may act by telegram, letter or long distance telephone. When the General President requires action by the General Executive Board, he may obtain the same by telegraphing, writing or telephoning to the members of the General Executive Board, and such members may take action on the matter brought to their attention in the same manner. Such action so taken by the majority of the members of the General Executive Board shall constitute action of the General Executive Board as though the General Executive Board was in formal session.

Special Conventions

Sec. 7. Special conventions may be called when a majority of the members of the General Executive Board deem it necessary.

Employment of Clerical Help

Sec. 8. The General President and General Secretary-Treasurer shall have the power to employ

such clerical assistance as may, from time to time, be necessary. Such help shall be paid reasonable salaries from the general fund, all of which shall be subject to the approval of the General Executive Board.

Article X

INITIATION FEES, PER CAPITA TAX, ETC.; BOOK AUDITS OF LOCALS

Revenue

Section 1. The revenue of the International Brotherhood shall be derived as follows:

Organization fee, which includes seal and all other organization supplies, $15.

From the sale of supplies to local unions and from the sale of stamps of the following denominations: Initiation stamps, which are $1.00; monthly due stamps (per capita), 40 cents.

(See Sec. 4 of this Article for additional revenue when initiation fee exceeds $25.00.)

Assessments for Emergencies

Sec. 2. Whenever the funds of the International Union run below five million dollars ($5,000,000) the General Executive Board shall levy an assessment of one dollar ($1.00) per member on all local unions. Any local union failing to pay the assessment shall not be entitled to any of the benefits of the International organization. After being properly notified and given a reasonable length of time, if the union further refuses to pay the assessment, said local shall be suspended. Any local union failing to pay the assessment shall not be represented at the International Convention.

Payment of Initiation Fees, Reinstatement Fees, and Per Capita Tax

Sec. 3. (a). Each local union shall pay to the General Secretary-Treasurer the sum of one dollar ($1.00) for every initiation fee or equivalent thereof collected up to and including twenty-five dollars ($25.00). When the initiation fee exceeds $25.00 there shall be paid to the International 10% of the total initiation fee.*

(b). Each local union shall pay to the General Secretary-Treasurer a per capita tax of 40 cents per month, payable for the current month, not later than the 10th day of the succeeding month.

(c). All reinstatement fees paid into the local union shall be figured as monthly dues and the per capita tax must be paid on the same. The General Secretary-Treasurer shall receipt for all initiation fees and per capita tax by giving stamps of the above-named denomination.

Per Capita Tax; Preferred Payment

Sec. 4. Per capita tax due the International Union each month shall be paid before the payment of any other bills or obligations of the local union.

Payment of Dues and Fees and Receipt Therefor

Sec. 5. (a). Any member paying his initiation fees, monthly dues or reinstatement fees shall receive stamps from the local secretary-treasurer, who shall carefully paste the same on the space provided for in the member's official due card, and cancel

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* When initiation fee or equivalent is $25 or less $1 to be paid to International; when initiation fee or equivalent exceeds $25 payment to International is 10% of total initiation fee (Illustration: If initiation fee is $50, International receives $5).

the stamps with the dater provided for this purpose and affix his signature (on the date the initiation fees, monthly dues, or the reinstatement fees are paid) and said stamps shall at all times be acknowledged as a receipt for payment in full for all amounts, as designated by the stamps.

(b). Any local secretary-treasurer refusing to stamp or otherwise receipt the members' due books according to the amount of dues paid shall be liable to expulsion when the General Executive Board takes such action. Any member refusing to return in his due book when requested shall be liable to a fine or suspension upon his local executive board taking such action. Any local union may, with the approval of the General Secretary-Treasurer, install and utilize a mechanical device or machine to record or register payment and receipt of fees and dues.

(c). All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing. Any member who shall be three months in arrears in the payment of dues, fines, assessments, or other charges, at the end of the third month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the local union or International Union. Local unions may provide suspension or expulsion for lesser period of arrearages.

(d). A local union may provide by-laws for the payment of quarterly dues, provided such by-laws are approved by the General President of the International Union. In any instance where a local union has provided for the payment of quarterly dues under this Section, any members thereof failing to pay such quarterly dues in accordance with such provisions shall not be considered in good standing.

(e). No other system of receipting for initiation fees, monthly dues or reinstatement fees will be recognized by the International Brotherhood.

Orders for Stamps and Supplies

Sec. 6. All orders for stamps or supplies must be made on the regular official order blank and have the seal of the local ordering same attached and all money sent to the General Secretary-Treasurer must be sent by postoffice or express money order, certified check or draft.

Reports To Be Furnished by Local Secretary-Treasurer

Sec. 7. (a). The local secretary-treasurer shall forward monthly to the General Secretary-Treasurer the names of all members initiated or reinstated, together with those who become suspended for nonpayment of dues or for any other cause; also a correct list of those who take transfer or withdrawal cards, and shall promptly notify the General Secretary-Treasurer upon the death of any member.

(b). The local secretary-treasurer shall forward to the General Secretary-Treasurer the name of any member coming in on a transfer or depositing a withdrawal card. The penalty for violation of this section shall be expulsion from the local and International Union. The secretary-treasurer shall read his report to the local for approval at the first meeting in the month, and, at once, sign, seal and forward the same to headquarters.

(c). The General Secretary-Treasurer shall notify the local secretary to comply with the laws, and if he does not, he shall be removed from office for the second offense.

Surety Bond

Sec. 8. (a). All local secretary-treasurers, business representatives and others who handle funds and property of the local union upon assuming office, or employment, shall immediately procure a suitable surety bond. Said bond must be procured from a recognized bonding company authorized to do business in the state where the local is situated, a copy of which shall be kept on file at the General Office. The original shall be retained by the trustees of the local union. The International Secretary-Treasurer may direct the increase or decrease in the amount of the bond when he deems it necessary and advisable.

(b). Any local secretary-treasurer or business representative failing to obtain or secure or provide a suitable surety bond satisfactory to the General Secretary-Treasurer or the General Executive Board shall automatically be deprived of holding any office for which a bond is required. Local officers failing to comply with this section shall subject the charter of such local union to suspension or revocation. The General President or the General Executive Board shall be empowered to suspend or revoke the charter of such local union for failure to comply with this section.

Filing of Monthly Audits

Sec. 9. (a). It shall be compulsory upon the trustees of all local unions to send a copy of their monthly audit to the General Secretary-Treasurer, to be placed on file in the General Office. Books of all local unions must be audited monthly by trustees.

(b). It shall be compulsory upon the trustees of all local unions or upon such other officer to whom the request is made to furnish such information as may be requested by the General Secretary-

Treasurer pertaining to finances and payments on uniform blanks to be furnished for such purpose by the General Secretary-Treasurer.

Deposit of Money

Sec. 10. It shall be compulsory upon all local unions to keep their money deposited in reliable banks in the name of the local unions, and all moneys paid out for the local union must be paid by check upon the order of the local union and signed by at least 2 elective officers in the manner provided for by the local union by-laws.

Audit of Books of Local Unions

Sec. 11. (a). Any organizer or officer of the International Union may be delegated, instructed and empowered by the General President or General Secretary-Treasurer to audit or to employ auditors to audit the books of any local union or unions.

(b). Local union officers shall give the delegated officer for examination, all books, bills, receipts, vouchers and records, bonds, securities or other evidences of ownership to property or investments, of the local whenever requested.

(c). Any officer of a local union refusing to turn over the books, bills, vouchers or records to the delegated officer shall be subject to discipline under the provisions of Article XVIII, likewise, shall be liable to expulsion by the General Executive Board.

(d). Any member refusing to show his due card when asked shall be fined $10.

(e). If the officer delegated to audit the books discovers any dishonesty or incompetency in the officers which warrants him in notifying the General President and General Secretary-Treasurer he shall do so and they shall take whatever action they deem advisable. The officers auditing books shall

make a monthly report to the General President and General Secretary-Treasurer and shall have full power to go to any bank where a local union has its money deposited and investigate, and also get a certified balance sheet from the bank.

(f). The books of every local union that has been chartered over one year shall be audited between conventions.

Arrearage in Per Capita Tax

Sec. 12. Where the books of a local union have been examined and audited and arrearages to the General Office for per capita are found, same must be paid immediately. No per capita nor initiation stamps will be forwarded covering same, simply a receipt signed by the General Secretary-Treasurer covering the amount of per capita paid.

Penalty for Arrearage

Sec. 13. Should a local union become six months in arrears for per capita tax, their charter shall stand revoked. The General Secretary-Treasurer shall notify all local unions when two months in arrears, but failure to receive such notice shall not prevent the suspension of the local union, should it become three months in arrears.

Return of Funds, Books and Property Upon Revocation or Dissolution

Sec. 14. When the charter of a local union is revoked, the local union or its officers shall be required to turn over all books, documents, property and funds to the General President or his representative, or to the General Office of the International Brotherhood, and should a local union secede, disaffiliate or dissolve or be dissolved, or suspended or forfeit its charter, then all books, documents,

property and funds shall likewise be turned over to the General President, or his representative, or to the General Office to be held in trust until such time as the local union may be reinstated or reorganized.

Reorganization

Expenses Incurred in Recovering Property and Funds Are Chargeable to Funds or Property Recovered

Sec. 15. Whenever a local union secedes, disaffiliates or dissolves, or its charter is suspended or revoked, and demand is made upon such organization or its officers to deliver to the General President or his authorized representative the records, property and funds of such organization, and such demand is refused, then all expenses, of whatever nature, incurred by the International in recovering such records, property and funds, shall be a lawful charge upon the property and funds involved, and on recovery thereof, the International shall reimburse itself from the property and funds recovered. All property and funds shall be held in trust by the International until reorganization has been effected and shall be returned to the local when the same has been reorganized. If no reorganization is effected within a six-months period, then all properties and funds of such local union shall become the property and funds of the International Brotherhood. Reorganization shall be effected by and under the direction of the International.

Article XI

FINANCE COMMITTEE—DUTIES

Section 1. There shall be a Finance Committee consisting of the General President, the General Secretary-Treasurer, and a third member to be named

by the General Executive Board. This committee shall have the power to invest the funds of the International Brotherhood.

Provided, That not more than $50,000 be invested in bonds of any one corporation, except when the investment is in United States Government, State, County or Municipal bonds; *Provided further,* That nothing herein shall limit the General Executive Board to purchase or erect a building for General Offices for the use of the International Union and rental to others. Securities purchased shall be kept in a safety deposit box or boxes which shall be opened in the presence of two members of the Finance Committee.

Sec. 2. The Finance Committee, if requested so to do by the International, shall furnish a bond, payable to the International, in such sum and in such manner as the General Executive Board shall require.

Sec. 3. The General Executive Board shall be empowered, when it deems it necessary for the maintenance, protection and preservation of the labor movement, to make loans or advances to other labor organizations in a sum not to exceed in the aggregate 6% of the total assets of the International Union.

Article XII

STRIKES, LOCKOUTS, WAGE SCALES, DISPUTES OVER JURISDICTION

Strike Action by Local Unions

Section 1. (a). When any difficulty or dispute arises between the members of any local union and their employers, it shall be the duty of the officers of such local union to use every possible means of achieving a settlement or resolution of the difficulty

or dispute through the processes of collective bargaining.

(b). If a settlement cannot be reached the union shall, at a meeting, order a secret ballot to be taken, and it shall require a two-thirds majority of all members of the union present to adopt a motion to strike. The ballot must be "Yes" or "No" written on paper ballots. In the alternative the local union, if so determined by the Executive Board of such local union, may conduct such strike vote by referendum ballot of the entire membership in which event it shall also require a two-thirds majority vote of those responding to the referendum ballot in order to authorize a strike. In any strike situation the General President or the General Executive Board is authorized to direct that strike vote be taken by a referendum ballot.

(c). Prior to a local union becoming involved in a strike, lockout, boycott, lawsuit or any serious difficulty, such local union shall immediately notify the Joint Council of which it is a member of any contemplated action setting forth the action contemplated and nature of the difficulty. The Joint Council shall then take steps to approve or disapprove such contemplated action. The Joint Council shall notify the General President of the steps it has taken in respect to such contemplated action. The General President is authorized to approve, disapprove or modify the action of the Joint Council. Approval, disapproval or modification of the action of the Joint Council or the local union by the General President shall not operate to impose any liability on the International or its officers or to make them parties to any such action. The International does not assume any liability of any nature to any person or persons simply by reason of such approval, disapproval or modification.

(d). The Executive Board of a local union may, in its discretion, provide that the strike vote mentioned in Section 1 (b) above, be limited to the members employed in a particular division, craft, or place of employment. In cases of conferences, the provisions of this Article, with respect to strike votes, shall be satisfied if a majority of the local unions affiliated with such conference have voted to strike in accordance with the provisions of this Article, in which event such strike vote shall apply to all such affiliated locals. Strike votes shall not be required in any case where a collective bargaining agreement then in existence authorizes such strike for the purpose of enforcing the terms of such agreement.

Payment of Benefits

Sec. 2. The General Executive Board shall have the power to pay out the entire International Treasury to a local union that is on strike, where the General Executive Board has recognized the strike as one properly subject to the payment of the constitutional benefits provided for herein.

Consent of General Executive Board

Sec. 3. Any local union going out upon strike without prior recognition thereof by the General Executive Board as being a strike properly subject to the payment of strike benefits, under the provisions of this Constitution, shall not be entitled to financial benefits from the International Union, provided for by the Constitution.

Strike Benefits

Sec. 4. Strike benefits in strikes recognized as properly subject to the payment of strike benefits or relief in cases of lockouts, etc., shall be paid to

all members not in arrears for dues in excess of one (1) month and otherwise in good standing, who are members of a local union not more than one (1) month in arrears in per capita tax at the rate of $15 per week; provided that whenever the total net assets of the International shall reach an amount more than five million dollars below the amount of such assets as disclosed by the General Secretary-Treasurer's report to the 1952 convention then, and in that event, the rate of strike benefits shall revert back to $10 per week for such period of time as such total net assets shall remain below such amount. Such strike benefits will be payable at the end of the second week of the strike or lockout; but in no case shall a fraction of a week's strike pay be allowed nor the first week of a strike or lockout be paid for, provided that in the last week of a strike the first four days or more of such strike shall be considered a week; any arrearages for dues, and dues one (1) month in advance shall be deducted from the first payment of benefits and duly credited to the member or members so in arrears so as to maintain such member or members in good standing and preserve his or their rights, if any, to financial benefits. All members shall be entitled to the strike benefits provided for herein for such a period of time as the General Executive Board shall determine.

Requirements for Payment of Strike Benefits

Sec. 5. (a). No local union shall receive strike benefits from the International Brotherhood unless the local union has been six months in good standing, provided that local unions chartered for a period of six (6) months or less prior to applying for strike benefits shall be required to have been in continuous good standing from the time of its chartering in order to be eligible for strike benefits.

(b). Any local union which has not paid per capita tax on every member who has paid dues into said local, and which has not enrolled its entire membership at Headquarters, shall not be entitled to benefits in case of a strike or lockout.

(c). A local union or member more than one month in arrears for per capita tax or dues shall not be entitled to strike benefits, and should a local union or member become three months in arrears for per capita tax, dues, fines, etc., they shall stand suspended and shall not be entitled to benefits for three months after all arrears have been paid.

(d). No member of a local union on strike shall be entitled to a weekly benefit unless he appears in person at Headquarters, or other designated place, and reports daily to the proper officers of the local or International Union while the strike continues, and no member who shall receive a week's work (three days to be considered a week) shall receive benefits. Any member refusing to work for an employer considered fair, while on strike, shall be debarred from all benefits under this law.

Payrolls, Reports

Sec. 6. (a). The General Secretary-Treasurer shall, on or about the end of the second week and each succeeding week of a strike or lockout, forward to the local secretary-treasurer or deputy a check covering a sufficient amount to pay each week's benefits, and he shall also furnish blank payroll sheets on which each member shall sign for the amount received, said payroll to be made in duplicate.

(b). The local secretary-treasurer or deputy shall forward the original payroll to Headquarters, but shall retain a carbon copy of the same for future

reference, and the executive board of the local union that is out on strike shall endorse the payroll.

(c). Failure to receive receipted payroll sheets in due time at the General Office will be sufficient cause for the discontinuance of benefits to any local union failing to comply with this law.

(d). During the continuance of a strike the deputy or strike committee of the local union shall make weekly reports to the General Secretary-Treasurer, showing the amount of moneys distributed for benefits, the number of beneficiaries and all other facts that may be required.

Termination of Strike

Sec. 7. The General President, with the sanction of the General Executive Board, shall have the power, when satisfied upon facts and information in his possession that the support of a strike or lockout shall cease, to declare the same at an end so far as the financial aid of the International Union is concerned.

Return of Unused Strike Funds

Sec. 8. All moneys from the International defense fund remaining unused by the local union at the close of the strike or lockout shall be returned at once to the General Secretary-Treasurer.

Lockout

Sec. 9. Among other circumstances, a declaration on the part of an employer, or a combination of employers, to the effect that their employes must cease their connection with the Brotherhood or cease work, shall be deemed a lockout. In case a lockout is reported to the International Brotherhood, the General President shall endeavor to obtain a satisfactory proof that the difficulty is a bona fide

lockout. Also a lockout shall be deemed to exist when an employer refuses to permit his employes to continue at work, unless such employes agree to a substantial and material breach of an existing agreement or refuses to permit work with or without stated reasons or conditions.

Sec. 10. Nothing herein contained concerning the manner of calling strikes or concerning the legality of strikes for the purpose of obtaining the payment of International strike benefits shall affect the legality of the strike in respect to the employer against whom the local union instituted such strike; nor shall any provision contained herein concerning strike recognition for payment of strike or lockout benefits be intended to constitute the International Union a party to such strike or lockout.

Wage Scales and Approval Thereof

Sec. 11. (a). Any local desiring to present a wage scale to its employers shall first submit a copy of the same to the Joint Council, if one exists in its city or vicinity. Should the same have the approval of the Joint Council, it shall be compulsory upon the local unions to forward a copy of the wage scale to the General President for his sanction before the same shall be presented to any employer. The General President shall have the power to inquire into the conditions surrounding the local union, and if, in his judgment, conditions do not warrant the presentation of the same, he shall immediately notify the local union of his decision in the matter. A copy of the wage scale must be in the hands of the General President at least thirty (30) days before presenting the same to the employers.

(b). True copies of final agreements arrived at by a local or a Joint Council shall be filed in the

office of the General President immediately upon consummation.

(c). Approval or disapproval by the General President of wage scales or other agreements is not intended to impose any liability on the International or its officers; and the International does not assume any liability of any nature to any person or persons for such approval or disapproval.

(d). No contract entered into between a local union and any employer or employer group shall be valid and binding upon such local union until approved by the General President or unless approval thereof is at any time specifically waived by him or his representative.

Disputes Over Jurisdiction

Sec. 12. Where two or more local unions are in dispute concerning jurisdiction, there shall be no work stoppage of the involved operation, but such controversy shall be submitted for determination to the Joint Council. If any party to such dispute is aggrieved by the decision of the Joint Council, it may appeal to the General President for the appointment of a special committee which in his discretion he may appoint for the purpose of holding a hearing and making a report and recommendations on the issues raised. The committee shall make its report and recommendations to the General Executive Board for its decision, which shall be final and binding. The parties shall not be entitled to any further hearing or appearances before the General Executive Board. Pending and as a condition to appeal and until such time as the Executive Board makes its decision, any party taking an appeal under this Section shall comply with the determination of the Joint Council.

Any local union violating this provision and engaging in any strike or work stoppage or refusing to comply with the decisions so rendered in accordance with this provision, shall be subject to the appointment of a trustee, revocation of charter, or such other penalty which the General Executive Board may propose.

Article XIII

ASSISTANCE TO LOCAL UNIONS

General Assistance to Local Unions

Section 1. No local union shall receive financial assistance from the International Brotherhood unless the secretary-treasurer of said local union has been bonded in accordance with the provisions of this Constitution.

Assistance From Sister Locals

Sec. 2. All local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, soliciting financial aid from sister local unions, must first receive official approval and endorsement from the General Executive Board.

Article XIV

CHARTER MEMBERS, DUES, MEETINGS OF LOCALS

Charter Members

Section 1. (a). Charter members shall consist of the names forwarded to Headquarters with the application for charter, and local unions must procure initiation stamps for all charter members, but charter members shall not be required to pay per

capita tax for the month in which they receive their charter.

(b). Charter members shall receive a free copy of the Constitution and official due card from the International Union.

(c). A local union may, by a majority vote, keep its charter open for a term of thirty or sixty days after receiving the same, but all members initiated must have their official due cards stamped as provided by Article X, Sec. 6 (a).

Dues and Meetings of Locals; Forfeiture of Financial Benefits for Failure To Hold Meetings

Sec. 2. (a). Dues of members of all local unions chartered by the International Union shall not be less than three dollars ($3.00) per month; provided that in the case of locals chartered after the 1952 convention (except in the case where one or more locals are created and chartered out of an already existing local or locals) the dues of the members of such local unions shall be not less than two dollars ($2.00) for the first year following such chartering.

(b). All local unions must hold meetings at least once a month, except where the General Executive Board is satisfied, from evidence provided by the local unions, that it is impossible or unsatisfactory or unreasonably expensive, and in such cases the General Executive Board shall establish such conditions relative to the holding of meetings as in its judgment it deems advisable. Provided, however, meetings may be suspended without such approval during June, July and August by action of the local union.

(c). Any local failing to comply with this Section

during the twelve (12) month period immediately preceding application for benefits or in the case of a local chartered for less than twelve (12) months during the period following its chartering shall not be entitled to any financial or other benefits from the International Union, provided that the General Executive Board may, for good cause shown, waive the requirements of this Constitution in respect to the paying of financial or other benefits and authorize the payment of same. The General Executive Board may revoke the charter of any local union failing to comply with this section.

Article XV

JOINT COUNCILS

Formation of Joint Councils

Section 1. (a). Whenever three or more local unions are located in one city they shall form a Joint Council, but where there are only a few local unions in small cities or towns adjoining or adjacent to large cities, they shall affiliate with the Joint Council in the large cities.

(b). In localities composed of small cities and towns, the General Executive Board shall decide when, where and by whom Joint Councils shall be formed. Should any dispute arise as to the jurisdiction of a Joint Council, it shall be decided by the General Executive Board.

(c). Whenever in the judgment of the General Executive Board the jurisdiction of a Joint Council should cover a wider area, the General Executive Board may so order.

Representation

Sec. 2. (a). Each local shall be entitled to seven delegates, excluding its Business Representative.

(b). The seven executive officers of each local union shall constitute the delegates to the Joint Council. The Business Representative shall be entitled to the floor, but cannot introduce a motion or vote.

Dues

Sec. 3. Local unions shall pay monthly dues, proportionate to their numerical strength, sufficient to maintain the organization.

Judicial Powers

Sec. 4. (a). Joint Councils shall have full power to adjust all questions of jurisdiction between local unions, subject to the provisions of Article XII, Section 13, to try cases against local unions, cases appealed from local unions, and to try individual cases which local unions refuse or neglect to try in accordance with the trial procedure provided for in Article XVIII.

(b). Should any member violate his obligation by refusing to employ union men, or to patronize and assist members of the International Brotherhood, the member who may have been aggrieved shall present his case in writing to the Joint Council and if there is no Joint Council then to the General Executive Board and they shall hear and decide the case and report their decision back to each affiliated local.

(c). In order to facilitate the work of the General Executive Board, the General President is empowered to appoint a grievance committee of three members to hear appeals and to refer to it appeals taken to the General Executive Board. The grievance committee shall meet at the time and place designated by the General President. This committee shall afford the parties to the appeal the same character of hear-

ing as would be given the parties by the General Executive Board and the same procedure shall apply as is provided for appeals to the General Executive Board. When the hearing is concluded before the committee, it shall make its report and recommendations to the General Executive Board for disposition of the appeal: The decision in the case shall be made by the General Executive Board. The parties to the appeal shall not be entitled to further hearing or further personal appearance before the General Executive Board.

By-Laws for Joint Council

Sec. 5. A Joint Council may make such by-laws as it deems proper, provided it does not conflict with the laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. Such by-laws and amendments thereto shall be submitted to the General President for approval and shall have no force nor effect until approved by the General President; regardless of approval, if any conflict should arise between such by-laws or amendments thereto and the International Constitution or amendments thereto, the provisions of the International Constitution shall control.

Affiliation of Local Unions

Sec. 6. All local unions within the jurisdiction of the Joint Council shall affiliate with the Joint Council, comply with its laws and obey its orders.

Conferences

Sec. 7. Experience has demonstrated that conferences are beneficial to this International Union and its affiliates and should, therefore, be recognized as organic bodies within this International Union; therefore, conferences shall be organized on such

geographical areas or trade divisions as the General Executive Board may direct; that they shall be at all times subject to the supervision and control of the International Union; they shall function under rules and by-laws laid down by the General Executive Board. The International Union Constitution shall supersede conference by-laws in the event of conflict.

Affiliation with and participation in activities of conferences by local unions shall be necessary when and to the extent ordered by the General Executive Board in its discretion.

Failure on the part of any local union to obey any order issued by the International Union in respect to such affiliation and participation shall subject such local union to the disciplinary provisions provided for in this Constitution for disobedience of orders of the International Union and of its General Officers.

Article XVI

CHARTERED MISCELLANEOUS LOCALS

Section 1. (a). Whenever there is not a sufficient number of any one craft, a mixed local may be formed. There shall be only one local union of any craft chartered in any city, except in localities where it may be necessary, and in such cases the General Executive Board shall, after consultation with the Joint Council, have full power to determine the advisability of issuing a separate charter.

(b). Whenever there is a mixed local union in existence, any separate and distinct division of each craft consisting of four hundred (400) or more members may apply to the International for a separate charter. However, such group shall first make request of the local union with which it is affiliated for approval of its application for a

separate charter. If such request is denied, or if the local fails to act upon the same within a reasonable time, then the application may be made to the International. Thereupon, the General President shall consider the matter, and if he deems it for the best interests of the organization he may order and direct, subject to the approval of the General Executive Board, that a separate charter be issued to the group applying for same. In the consideration of such application the General President shall notify the mixed local of the application for such separate charter, so that it may present argument in opposition to the issuance of such separate charter. When a separate charter is issued to a separate group as herein provided, all matters coming under the jurisdiction of the newly chartered local must be transferred to said new local. It shall be incumbent upon the mixed local union to provide the necessary funds with which the newly constituted local shall obtain its charter.

(c). Whenever, after a hearing, the General President, with the approval of the General Executive Board, or the General Executive Board determines that it is in the best interests of the local and International Union that new local unions be established from existing local unions, such division may be so ordered, together with the terms and conditions upon which it shall be carried out.

Article XVII

TRANSFER AND WITHDRAWAL CARDS

Duty To Accept Transfer Card

Section 1. It shall be compulsory upon every local union to accept the transfer card of a member in good standing with any local union of the International Organization, without any extra charge or

fees, except as provided in the International Constitution provided, however, the member seeking to transfer shall comply with all rules and regulations set forth in this Constitution respecting transfer; and provided further he shall comply with rules and regulations of the local and its constitution and by-laws. Such union shall accord him opportunity for employment and all other rights and privileges in accordance with the rules and regulations of the local union to which he seeks to transfer.

Transfer Card
Date of Initiation

Sec. 2. This is to certify that the bearer hereof, Brother ....., whose name is written on the margin of this card in his own handwriting, is a member in good standing of Local No. ....., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and is entitled to all rights and privileges under our jurisdiction.

We recommend him to the friendship and protection of all members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, wherever he may be, and to free admission, provided he has been a member not less than ninety days in the local union from which he transfers, otherwise he shall pay the difference in the initiation fee to the local union to which he transfers.

This card expires ....., 19....., and is null and void after that date, unless renewed or deposited in accordance with the Constitution.

The member receiving this card will be suspended from all rights and benefits unless the card is renewed by the local union before its expiration. It will also be forfeited unless deposited within thirty days after going to work in any town or city where there is a local union.

This card is issued in accordance with provisions of Article XVII, Sec. 1, and Article XVII, Sec. 3, of the International Constitution.

Given under our hands and the seal of Local Union No. ....., this ..... day of ....., 19.....

(SEAL)

Deposit of Transfer Card

Sec. 3. (a). It shall be compulsory for a member working under the jurisdiction of another local union to procure a transfer card from the local of which he is a member, and to deposit the same with the local union under whose jurisdiction he is working. Immediately upon going to work or before if practicable, he shall make a request in writing of the local union of which he is a member and from which he seeks to transfer for the issuance of a transfer card to him, and shall also apply to the secretary-treasurer of the local union into which he is seeking to transfer for approval of that secretary-treasurer so to transfer. No transfer card shall be issued unless such approval has been obtained in writing attested to by such secretary-treasurer. Within forty-eight (48) hours after a member has received a transfer card he shall deposit the same with the local union to which he seeks to transfer, and upon such deposit the transfer shall become effective. Upon transfer the member is subject to the rules, by-laws and agreements of the local union to which he has transferred. The local union from which a member has transferred shall be obliged to refund to such member dues paid in advance to such local covering the period from the end of the month in which such member has transferred to the end of the period for which such dues have been paid in advance. If a member continues to work under the

jurisdiction of another local union after having been refused a transfer card or after having failed to apply for such transfer card as specified herein, or after the Joint Council has decided he should transfer, and he has refused, he thereby forfeits his membership, and his local must not accept any more dues or furnish him with a button. Refusal to issue a transfer card or to approve a transfer may be appealed to the General President and thereafter to the General Executive Board in accordance with the appeal procedures provided for in this Constitution, excluding, however, appeal to the convention.

(b). When seeking transfer, said member shall present to the local union into which transfer is sought proper and satisfactory identification and also produce an official due card stamped up to date. Salaried officers of the International Brotherhood shall not be required to transfer from their respective locals while employed by the International Organization.

Jurisdiction to Issue Honorable Withdrawal Card

Sec. 4. Local unions shall have jurisdiction over the granting of all honorable withdrawal cards. Refusal to grant honorable withdrawal card shall be subject to appeal in accordance with the appeal procedure provided for by this Constitution, excluding, however, any appeal to the convention.

There shall be a charge of twenty-five cents (25 cents) to any member receiving a withdrawal card, and it shall be the duty of the secretary-treasurer of the local union receiving such charge to duly record the payment thereof in his cash book and carry it to his ledger.

The following provisions shall govern withdrawal cards and shall be embodied in the withdrawal card in the form prescribed by Section 5 hereof:

Honorable Withdrawal Card

Sec. 5. (a). This is to certify that the bearer hereof, Brother ....., whose name appears on the margin of this card in his own handwriting, has paid all dues and demands and withdrawn in good standing from membership in Local No. .....

(b). This card entitles him to readmission to the local union from which this card was issued at any time, subject, however, to the provisions of subsection (e) of this section.

(c). Any member of the International Union leaving our employment or going to work at another craft or occupation, must be given an honorable withdrawal card and cannot remain a member of the International Union; but before a withdrawal card is issued the individual must comply with all rules and laws of the local and International Union.

(d). Any ex-member out on a withdrawal card and desiring to return to membership, must first deposit his withdrawal card with the local union by which it was issued; and upon the withdrawal card being accepted, the member shall be subject to the rules and laws of the local union. Refusal of any local union to accept a withdrawal card shall be subject to appeal in accordance with appeal procedure provided for by this Constitution, excluding, however, any appeal to the convention.

(e). Local unions must not accept withdrawal cards if the member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if the local union is

paying benefits and the member has fallen into bad health or is liable to become a charge against the local or International Union, acceptance of the withdrawal card can be refused by the local union. Likewise acceptance of withdrawal card may be refused where adverse employment conditions exist.

Given under our hands and seal of Local Union No. ....., this ..... day of .....

19.....

(SEAL)

....., Secretary.

....., President.

Article XVIII

TRIALS AND APPEALS

Trials of Local Officers and Members—Procedure

Section 1. (a). A member or officer of a local union, charged with any offense constituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Executive Board. If the member charged or proposing the charges is a member of such Board then the president of the local shall appoint a disinterested member as a substitute.

(b). Whenever charges are preferred against any member or officer of a local, the charges shall be filed in writing in duplicate with the secretary of the local union, Joint Council or General Executive Board which is to try the case. No member or officer of a local shall be tried unless he or she shall

be served by the secretary, personally or by registered mail, with a written copy of such charges specifying the nature of the offense of which he or she is accused. Thereupon, the accused shall be required to stand trial at the time and place designated, which shall not be less than ten (10) days from the date the charges are served upon the accused. The accused may appear in person, and with witnesses, to answer the charges preferred against him or her. He may select a member of his local to represent him in the presentation of his defense.

(c). If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused restored to full rights of membership or office in the local union.

(d). Upon filing of such charges, and if the same are of such magnitude and seriousness as to jeopardize the interests of the local or International, then and in that event the General President, if the matter is brought to his attention, may, if he deems it advisable, immediately suspend such member or officer from membership or office in the local union until a decision has been rendered in the case.

Appeals of Local Officers and Members

Sec. 2. (a). In the event disciplinary action is taken against the accused, he or she may take an appeal from the decision of the Local Executive Board to the Executive Board of the Joint Council, if one exists, otherwise the appeal shall be taken to the General Executive Board. Appeals from decisions of the Executive Board of Joint Councils

may be taken to the General Executive Board. In all matters involving officers of subordinate bodies and individual members there shall be no further appeal from the decision of the General Executive Board. Where elective officers of the International Union are involved, and as to all other matters not specifically excluded herein, appeals from decisions of the General Executive Board may be taken to the next Convention. All manner of appeals shall be taken within fifteen (15) days from the date the decision is placed in the mail or otherwise transmitted to the interested parties.

(b). The appellant shall mail a written notice of such appeal to the secretary of the body to which the appeal is directed. No specific form or formality shall be required, except that such notice shall clearly state an appeal is being taken from the particular decision rendered in the particular case. Pending any appeal, the decision appealed from shall remain in full force and effect. Appeals shall be heard either on the record made before the trial tribunal or by a re-trial, in the discretion of the body hearing the appeal. Decisions on appeals shall be rendered as promptly as possible after the appeal has been heard. The date when an appeal will be considered by the appellate body may be fixed by it, but it shall proceed without unnecessary delay. Notice of the date when the appeal will be heard shall be served personally or by registered mail on the parties interested in the particular case, and such parties may, in the discretion of the appellate body, be accorded the right to appear before the appellate body and present argument on the case.

(c). If a member of the Executive Board of the Joint Council or of the General Executive Board is interested in the case as a party thereto, then the President of the Joint Council or the General Presi-

dent of the International, as the case may be, shall appoint a substitute.

(d). Failure of any interested party in any case to appear before any trial or appellate body at the time and place designated in the notice shall constitute a waiver of appearance and the trial shall proceed or the appeal heard regardless of the absence of such party.

(e). Any party to a case, regardless of whether such party is the accused or not, being aggrieved of a decision rendered in the case shall be entitled to the same rights of appeal as are hereinbefore provided for accused.

Trials and Appeals of Local Unions, Other Subordinate Bodies, and Elective International Officers

Sec. 3. (a). Whenever charges are preferred against a local union or against a Joint Council, or other subordinate body, such charges shall be filed in writing in duplicate with the secretary of the trial body, and shall be served personally or by registered mail on the secretary-treasurer of the local union or the Joint Council or other subordinate body so charged. If the charges are against the local union the trial shall be by the Executive Board of the Joint Council, provided that if the local union is not affiliated with a Joint Council due to the fact that no Joint Council exists with which such local union can affiliate, the trial shall be by the General Executive Board. If the charges are against a Joint Council or other subordinate body the trial shall be before the General Executive Board.

(b). A local shall be accorded thirty (30) days' time in which to appear for trial and submit its defense. In the case of a Joint Council or other

subordinate body the time of trial shall be fixed by the General Executive Board.

(c). In the matter of appeals from decisions affecting local unions not including decisions involving officers or individuals, the same shall be taken to the General Executive Board, and from it to the Convention. In the matter of appeals from decisions affecting Joint Councils, or other subordinate bodies, not including decisions involving officers or members thereof, the same shall be taken to the Convention. In all other respects procedure on appeals shall be the same as provided for in Section 2, this Article.

(d). Trial of elective International officers shall be before the General Executive Board at such time and place as fixed by the General Executive Board. The officer charged shall be found guilty only on a majority vote of the entire General Executive Board. Appeals by such General Officers from decisions of the General Executive Board shall be to the Convention.

(e). Emergency powers provided for in Section 9, this Article, shall apply with the same force and effect to local unions and Joint Councils and other subordinate bodies.

Original Jurisdiction of General Executive Board To Try Offenses Against International Union

Sec. 4. (a). Notwithstanding any other provision of this Constitution, the General Executive Board shall have jurisdiction to try individual members, officers, local unions, Joint Councils or other subordinate bodies for all offenses committed against the officers of the International Organization or the International Organization. In the event charges

have been filed or hearings are pending before a subordinate body in respect to any offense over which the General Executive Board has assumed jurisdiction under this section, the jurisdiction of such subordinate body shall forthwith terminate, and the subordinate body shall, upon request of the General Executive Board, transfer all of its records and papers pertaining to the case to the General Executive Board.

(b). Charges shall be filed in duplicate in writing with the General Secretary-Treasurer or the General President. A copy of the charges shall be served personally or by registered mail upon the accused, together with notice of the time and place of trial.

(c). If the accused are unable to be present at the meeting of the Board, they may present their case in writing.

Trials Before Panels of Executive Boards

Sec. 5. In any case where a trial before the General Executive Board of the International Brotherhood or the Executive Board of any subordinate body thereof is required under the provisions of this Constitution, such board may have such trial conducted before a panel appointed by the General President or the president of the subordinate body as the case may be, consisting of one or more disinterested members thereof. This panel shall act on behalf of such board in the holding of hearings and the taking of evidence and, following the conclusion of the hearing before it, shall make a full report in writing, including findings and such recommendations for disciplinary action, if any, the board itself is to take. The ultimate determination of the case, however, shall be made by the board itself on the basis of the record made before the panel.

Grounds for Charges Against Members, Locals, Joint Councils and Officers

Sec. 6. The basis for charges against members, officers, local unions, Joint Councils or other subordinate bodies, for which he or it shall stand trial, shall consist of but not be limited to the following:

(1) Violation of any specific provision of the Constitution or failure to perform any of the duties specified thereunder.

(2) Violation of the oath of loyalty to the local and the International.

(3) Violation of the oath of office.

(4) Gross disloyalty, or conduct unbecoming a member.

(5) If an officer, gross inefficiency which shall hinder and impair the interests of the local or of the International.

(6) Misappropriation.

(7) Secession, or fostering the same.

(8) Abuse of fellow members and officers by written or oral communication.

(9) Abuse of fellow members or officers in the meeting hall.

(10) Activities which tend to bring the local or the International into disrepute.

(11) Disobedience to the regulations, rules, mandates and decrees of the local or of the officers of the International.

(12) Such other acts and conduct which shall be considered inconsistent with the duties, obligations and fealty to a member of a trade union, and for violation of sound trade union principles.

Specific Offenses

Sec. 7. Any member who (1) knowingly goes to

work or remains in the employment of any person, firm or corporation, whose men are on strike or locked out, unless he has permission of the International, the Joint Council or his local union, may be tried by the Executive Board of his local union, or (2) knowingly gives or attempts to give directly or indirectly, any information to any employer on an unfair list or whose men are on strike or locked out, or whose men are trying to secure an agreement or an improvement in their working conditions or whose men are trying to prevent an increase in hours of labor or a decrease in wages, for the purpose of assisting such employer, or for any gain or promise of gain, or (3) knowingly goes to work or remains in the employment of any person, firm or corporation on an unfair list of the International without permission from the International Brotherhood, the Joint Council or his local union, may be tried in the manner provided for the trial of other offenses.

Refusal To Return Books

Sec. 8. Any member who (1) wrongfully takes or retains any money, books, papers or any other property belonging to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, any Joint Council, local union, or other subordinate body; or (2) who mutilates, erases, destroys or in any way injures any books, bills, receipts, vouchers, or other property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, any Joint Council, local union or other subordinate body, may be tried in the manner provided for the trial of other offenses.

Decisions and Penalties

Sec. 9. (a). Decisions and penalties imposed upon individual members, officers, locals, Joint Councils or other subordinate bodies found guilty of charges may

consist of reprimands, fines, suspensions, expulsions, revocations, denial to hold any office permanently or for a fixed period or commands to do or perform, or refrain from doing or performing, specified acts. If the penalty is by way of fine then the same must be paid, pending an appeal if one is taken unless the General President waives the same. A local union ordered to reinstate a member or perform an act other than the payment of a fine must comply therewith as a condition precedent to taking an appeal unless the General President or the General Executive Board suspends such order pending the appeal. If the fine is against a member or officer of a local union, assessed by the local union, it shall be paid into the Treasury of the local union. If a fine is assessed against a Local by a Joint Council the payment shall be to the Treasury of the Joint Council.

(b). If the fine is assessed where the General Executive Board has assumed original jurisdiction, it shall be paid to the Treasury of the International.

(c). When such penalty consists only of a fine and an appeal is taken, such fine shall be deposited as above provided; thereupon such member, officer or Local shall be permitted to continue in the Union with full rights and privileges in accordance with the laws of the International. If on appeal the decision is reversed and the fine disallowed, then the same shall be returned to the party depositing the same. Whenever a decision is handed down by any trial or appellate body and an appeal is taken, such decision shall stand and remain in full force and effect until reversed by a higher body.

(d). In the event of non-compliance with the decision handed down by a trial or appellate body, the member, officer, local, or Joint Council shall stand suspended from all privileges of the International Brotherhood until the provisions of the decision have

been complied with. If, however, the decision carries with it an order of expulsion, then such order of expulsion shall immediately take effect.

(e). Any member or local that is tried by the General Executive Board cannot be tried for the same offense by a local or Joint Council.

(f). The General Executive Board may send a case back to the Joint Council, the local union, or other hearing body or officer for further hearing, production of additional testimony, or for further consideration with or without such further hearing.

Emergency Power in General President To Conduct a Trial When Welfare of Organization Demands

Sec. 10. (a). Whenever charges involving a member or members, officer or officers, local union, Joint Council or other subordinate body create, involve or relate to a situation imminently dangerous to the welfare of a local union, Joint Council, other subordinate body or the International, the General President is empowered, in his discretion, in all cases except where the General Executive Board has assumed jurisdiction under Section 4 of this article, to assume original jurisdiction in such matter, regardless of the fact that charges have been filed with a subordinate body and are pending. When the General President has assumed such original jurisdiction under this section, the jurisdiction of the subordinate body shall cease. Under such circumstances, the General President shall hold a hearing upon giving not less than forty-eight (48) hours notice to the party or parties charged to appear before him at a place and time designated by him. He shall then proceed to hear and try the matter and render judgment in accordance with the facts and circumstances presented to him. When the General President has

so acted, an appeal shall lie from his decision to the General Executive Board, and from the General Executive Board to the Convention in the same manner and to the same extent only as is provided for appeals in other cases. Pending appeal from the General President's action, his decision shall stand and be enforced.

(b). When the General President deems it necessary to exercise the foregoing emergency power, he may deputize a representative or representatives to act for him in such matter. Such representative shall have the same powers as the General President as herein provided; however, when a trial shall be conducted by a representative or representatives of the General President, such representative or representatives shall make his or their recommendations to the General President, orally or in writing, and the decision in the case shall be made by the General President himself.

Charges Not Preferred in Good Faith

Sec. 11. If charges are preferred and such charges are not sustained, and the trial body or appellate body is convinced that the same were not brought in good faith or were actuated by malice, the trial body or the appellate body may impose such penalty by the way of punishment as in its judgment is deemed proper under the circumstances.

Refusal of Local To Try Member

Sec. 12. Any local union refusing to try its members when charges have been preferred by another local union, for any cause whatsoever, the local union preferring the charges may then bring the charge before the Executive Board of the Joint Council, where one exists, for trial and decision in the same manner as provided for the conduct of

other trials before the Local Executive Board. If no Joint Council exists, then the matter shall come within the jurisdiction of the General Executive Board.

Revocation of Membership on Being Found Guilty of Crime

Sec. 13. (a). When a member is convicted of the commission of a crime or serious wrongdoing, or pleads guilty to the commission of a crime or serious wrongdoing, against the local union or against the community, and which crime or act of serious wrongdoing tends to bring dishonor upon the local union or the International Organization, it shall be the duty of the local union to proceed to revoke the membership of such member. Likewise, whenever a member of a local union has engaged in what is commonly termed racketeering, and he is found guilty thereof, thereby bringing dishonor upon the local union or upon the International Organization, it shall be the duty of the local union to proceed in the manner provided in Article XVIII, Sec. 1, to revoke the membership of such member.

(b). Under the circumstances referred to in the foregoing paragraph, the secretary-treasurer of the local union shall refuse to accept dues from any person so removed from membership. It shall be mandatory upon the Local Executive Board to order the name of such member stricken from the rolls and to notify all local unions in the district, the Joint Council and the International, of its action and the cause therefor.

(c). In the event a local union fails to carry out the foregoing provision, then the General President, when the matter is brought to his attention, shall have the power, in his discretion, to proceed to re-

voke or order the revocation of the membership of such member.

(d). Any individual whose membership is hereafter revoked in accordance with the provisions of this section may subsequently be reinstated to membership; such reinstatement shall be subject to the approval of the local of which he was a member, the involved Joint Council, and the General Executive Board.

Exhaustion of Remedies

Sec. 14. (a). Every member, officer, local union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered, shall be obliged to exhaust all remedies provided for in this Constitution and by the International before resorting to any other court or tribunal.

(b). Where a member, officer, local union, Joint Council, or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union shall be assessed against such individual, local union, Joint Council, or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.

Where such court action is by an individual or by a local union, Joint Council, or other subordinate body against a local union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the local union, Joint Council or other subordinate body proceeded against in court.

Article XIX

DISSOLUTION

No local union can dissolve, secede or disaffiliate while there are seven (7) dissenting members; no Joint Council can dissolve, secede or disaffiliate while there are two (2) dissenting local unions; nor can this International dissolve while there are seven (7) dissenting locals. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such local union or Joint Council shall become the property of the International Brotherhood as specified in Sections 14 and 15 of Article X hereof. Under no circumstances shall any local union or Joint Council distribute its funds, assets or properties individually among its membership.

Article XX

LABOR DAY

We recognize the first Monday in September as Labor Day, except in states where another day is provided by law, and call upon all local unions to observe the same. It is advisable for local unions to unite and march under one banner in cities where there is more than one local union and each local union can make such rules and regulations requiring their members to observe the day, as best adapted to their locality.

Article XXI

LOCAL UNIONS

Section 1. Each local union shall have the right to make such by-laws as it may deem advisable, providing they do not conflict with the laws of the International Union.

Sec. 2. The officers of the local union shall consist of a President, Vice-President, Recording Secretary, Secretary-Treasurer and three Trustees. These officers shall constitute the Executive Board of the organization.

Sec. 3. Election of officers of local unions shall not exceed the period for which International officers are elected and shall not be for a lesser period than three years. In the instance of local unions that have not been chartered two years at the time of the adoption of this provision and in the case of new locals hereafter chartered, until such locals have been chartered for two years, officers shall not be elected for a period longer than one year. No member while receiving severance or retirement benefits from the International Union shall be eligible to hold a salaried office or position in a local union; provided that International Vice-Presidents and International Trustees who are receiving severance or retirement benefits based solely on their salaries as such officers may hold a salaried office in a local union.

Sec. 4. The Conductor and Warden shall be appointed by the Chair. All officers shall serve for the period of their election unless removed for incompetency, or neglect of duty, dishonesty or other violation of this Constitution.

Sec. 5. Nomination of officers shall take place in November or December. The election shall follow at the next meeting, provided, however, that if it is so voted by the membership at a regular or special meeting held for such purpose prior to the election meeting, the election may be held at such other place or places and at such other time not later than one month after the nomination meeting as may be designated by the local executive board, in which case the election shall be by secret ballot to be placed in boxes (unless the executive board of the local

union has authorized the use of some standard type of election mechanical device insuring a secret ballot by machine vote), the election box or machine however to be located at a place or places designated by the local Executive Board for the convenience of the membership; balloting shall be open to suit the convenience of membership and for a period not less than six hours between the hours of 8:00 a. m. and 8:00 p. m., and it shall be the duty of the local Executive Board to provide safeguards for the honest and fair conduct of such election, including grant of the right to each nominee in such election of at least one observer at all times. The officers-elect may be installed at the same meeting at which they are elected or, if not elected at a meeting, at the next meeting following their election. Where the nominee is unopposed at the regularly designated nomination meeting, there shall be no necessity for the election of such nominee and he shall be declared duly elected at such nomination meeting, effective as of the conclusion of the term of the previous incumbent. The General President is authorized to change the time and place of nomination and election provided for in this section.

Sec. 6. The regular nominations and elections in local unions, having a substantial number of seasonal workers in their membership, shall be held at such dates and times as the General President shall designate in the year provided for in the local union by-laws, and in conformance with all other provisions in the International Constitution pertaining to nominations and elections.

Sec. 7. The Business Representative and assistants of a local union may be elected or appointed in the manner provided by the local by-laws, the same as any other officer; but can be removed at any time for incompetency, neglect of duty, or dishonesty or

other violations of this Constitution, or if there are not sufficient funds in the local union to pay his salary. Unless otherwise provided in this Constitution, elected Business Representatives and assistants of local unions are entitled to trial before removal; those not elected, but merely appointed or hired, are not entitled to such trial before removal.

Article XXII

DUTIES OF LOCAL SECRETARY-TREASURERS

Section 1. Local union Secretary-Treasurers, immediately upon taking the office of Secretary-Treasurer, shall procure a suitable surety bond, and a copy of the same must be filed in the General Office.

Sec. 2. Local Secretary-Treasurers shall deposit all moneys in the local unions in a reliable bank in the name of the local union at least twice a month or oftener, if possible, as the local union may designate from time to time.

Sec. 3. Local Secretary-Treasurers must pay all bills by check, signed by any two of the following: the Local President, the Local Secretary-Treasurer, one elected Business Representative. In the event that two or all of these officials become ill or otherwise incapacitated the Local Executive Board shall designate substitutes for the purpose of signing such checks.

Sec. 4. Local Secretary-Treasurers must balance their day book and cash book monthly, showing the exact balance on hand with the local union on the first day of the coming month, and have their bank book balanced on the last day of the month or get a bank statement from the bank on the last day of the month, showing the exact amount of money in the bank, so that the Trustees of the organization

may verify the bank statement and the books of the local union at any time.

Sec. 5. Local Secretary-Treasurers must keep the International bookkeeping system, consisting of a day book, ledger records and cash book, or any other mechanical system approved by the General Secretary-Treasurer, and must issue dues books.

Sec. 6. Local Secretary-Treasurers must keep the applications of all new members initiated filed monthly.

Sec. 7. Local Secretary-Treasurers must keep all of the part paid applications on hand properly filed.

Sec. 8. Local Secretary-Treasurers must keep all receipted bills filed monthly.

Sec. 9. Local Secretary-Treasurers must attach all return checks to the stub in the check book of the local union each month when he receives his cancelled checks from the bank or adopt other procedures approved by the General Secretary-Treasurer.

Sec. 10. Local Secretary-Treasurers shall report to the General Secretary-Treasurer by the tenth day of each month, the number of men that are being carried on the books of the local union as good standing members as of the first day of that month, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

Sec. 11. Local Secretary-Treasurers must pay to the General Secretary-Treasurer 40 cents out of every due collected by the local union.

Sec. 12. Local Secretary-Treasurers must report the names and addresses of all new members coming into the local union to the General Office.

Sec. 13. Local Secretary-Treasurers shall send to

the General Secretary-Treasurer a revised list quarterly of the names and addresses of all members in good standing in the local union.

Sec. 14. Local Secretary-Treasurers cannot and must not carry any men on their books as members of the organization and mark them exempt from paying dues.

Sec. 15. Local Secretary-Treasurers on the monthly audit of the Trustees must see that the Trustees sign their books, if the Trustees of the local union have found them correct and the bank balance verified with the balance on the books of the local union.

Sec. 16. Local Secretary-Treasurers must see that the Chairman of the Trustees forwards a copy of the monthly audit, properly signed by the Trustees, showing the balance on hand with the local union to the General Secretary-Treasurer.

Sec. 17. When the term of office of a local Secretary-Treasurer expires and his successor is elected to take his place, he must see that his successor is properly bonded and a copy of the bond sent to the General Office before he transfers the funds of the organization to his successor in office.

Article XXIII

RULES OF ORDER FOR LOCAL UNIONS

Section 1. The President, while presiding, shall state every question coming before the local union before suffering debate thereon, and immediately before putting it to a vote he shall ask: "Is the Union ready for the question?" Should no member rise to speak and the local union indicates its readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

Sec. 2. When the decision of the President is appealed from, he shall state his decision and the

reasons therefor, from the Chair. The party appealing shall then briefly state the reasons for the appeal, after which, without further debate, the question shall be put thus: "Shall the decision of the Chair stand as the judgment of this Union?"

Sec. 3. Every member, while speaking, shall adhere to the question under debate, avoid all personality and indecorous language, as well as any reflection on the Union or any member thereof.

Sec. 4. Any member, while speaking, being called to order by another, at the request of the Chair, shall cease speaking and be seated until the question of order is determined.

Sec. 5. No member shall speak more than once on the same question until all the members wishing to speak have had an opportunity to do so; nor more than twice without the permission of the Chair, nor more than ten minutes at one time.

Sec. 6. All resolutions and motions, other than the first six, in Rule 8, to accept or adopt the report of the committee, shall be reduced to writing before the President shall state the same to the Union.

Sec. 7. Any member may call for the division of a question when the sense will admit of it.

Sec. 8. The following motions shall have precedence in the following order herein arranged: First, to adjourn; second, to close debate; third, to take the previous question; fourth, to lie on the table; fifth, to postpone indefinitely; sixth, to postpone to a definite time; seventh, to refer; eighth, to amend. The first four shall be decided without debate.

Sec. 9. The motion to close debate may be made by two members, and shall be put in this form: "Shall the debate now close?" And, if adopted, the President shall proceed to take the question on the

resolutions and amendments thereto, according to priority, without further debate.

Sec. 10. The call for the previous question may be made by six members and shall be put in this form: "Shall the main question be now put?" If adopted, the effect shall be to take the question on the original resolution to the exclusion of all debate and all amendments which have not been adopted.

Sec. 11. All votes other than amendments to the Constitution, By-Laws or Rules of Order may be considered at the same or next succeeding meeting upon a motion made and seconded by two members who voted in the majority; provided the Union agrees thereto; but after a motion to reconsider has once been lost, it shall not be renewed.

Sec. 12. Every member present shall vote on all questions before the Union unless personally interested. A motion to excuse a member from voting shall be put without debate.

Sec. 13. No member shall enter or leave the Union meeting during the reading of the minutes, admission of new members, installation of officers, or the taking of a question by yeas and nays; and no member shall be allowed to leave the Union meeting without the permission of the presiding officer, under penalty of twenty-five cents fine.

Sec. 14. When a motion has been declared carried or lost by acclamation, any member, before the Union proceeds to other business, may call for a count, but the yeas and nays cannot be called unless demanded before the President rises to put the question.

Sec. 15. The yeas and nays may be called for by two members and upon the assent of one-third of the members present shall be taken.

Sec. 16. A motion to adjourn having been put and lost shall not be in order again, provided there is further business before the Union, until fifteen minutes have elapsed.

Sec. 17. No subject of a political or religious nature shall be at any time admitted, under a penalty of fifty cents fine, but subjects which affect the economic welfare of our members shall not be prohibited even though they are political in nature.

Sec. 18. All business done in the Union shall be strictly secret to all outside the Union.

Sec. 19. (a). All and other proceedings in debate, not herein provided for, to be governed by Roberts' Rules of Order.

(b). One tap of the gavel shall call to order; two taps to be seated; three taps to rise.

Article XXIV

SAVING CLAUSES

Section 1. The provisions of this Constitution relating to the payment of dues, assessments, fines or penalties, etc., shall not be construed as incorporating into any union-security contract those requirements for good standing membership which may be in violation of applicable law, nor shall they be construed as requiring any employer to violate any applicable law. However, all financial obligations imposed by or under this Constitution and local union by-laws (and in conformity therewith) shall be legal obligations of the members upon whom imposed and enforcible in a court of law.

Sec. 2. If any provision of this Constitution shall be declared invalid or inoperative, by any competent authority of the executive, judicial or administrative branch of federal or state government, the Inter-

national Executive Board shall have the authority to suspend the operation of such provision during the period of its invalidity and to substitute in its place and stead a provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the invalid provision. If any Article or Section of this Constitution should be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid, shall not be affected thereby.

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CONSTITUTION

of the

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Article

Name

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Objects

Section 2. To organize under one banner all workmen engaged in the craft, and to educate them to cooperate in every movement which tends to benefit the organization; to impress upon our membership, our employers, and the public that it is to the advantage of all concerned that workers be organized; the organization of our craft requires honest and intelligent membership, adapted to the business; we teach our membership the advantage, benefits and importance of their industrial position, and we endeavor to build up and perfect a labor organization in conformity with the highest standards of our American and Canadian citizen-

ship; we seek to improve the industry by increasing the efficiency of the service and by instilling confidence, good will and understanding between our membership and their employers, which will have the effect of preventing unnecessary conflicts or serious misunderstandings between the membership and their employers, and which will further encourage cooperation and fair dealing with all employers so as to secure for our membership reasonable hours, fair wages and improved working conditions.

Article II

JURISDICTION, MEMBERSHIP, AND ELIGIBILITY TO OFFICE

Jurisdiction

Section 1. This organization has jurisdiction over all teamsters, chauffeurs, warehousemen and helpers; all who are employed on or around horses, harness, carriages, automobiles, trucks, trailers, and all other vehicles hauling, carrying, or conveying freight, merchandise, or materials; automotive sales, service and maintenance employees, garage workers and service station employees, warehousemen of all kinds employed in warehouse work, stockmen, shipping room employees, and loaders, that is persons engaged in loading or unloading freight, merchandise, or other materials on to or from any type of vehicle; all classes of dairy employees, inside and outside, including salesmen; brewery and soft drink workers; workers employed in ice cream plants; all other workers employed in the manufacture, processing, sale and distribution of food, milk, dairy, and other products; all truck terminal employees; cannery workers; and other workers where the security of the bargaining positions of the above classifications requires the organization of such other workers.

Membership

Section 2. (a). Any person of good moral character, employed in the craft or the various employments over which this International Union has jurisdiction, shall be eligible to membership in this organization. Provided, that hereafter no person shall be eligible for membership in this organization who has not declared his intention to become a citizen of the United States, if a resident of the United States, or of Canada, if a resident of Canada, or who, having declared such intention, has permitted same to lapse.

(b). Persons who own, lease or operate a team or vehicle and perform work under the jurisdiction of this International Union may be eligible for membership in this International Union.

(c). If, however, any Local Union can prove to the satisfaction of the General President that the membership of such individuals would be detrimental to the welfare of the Local Union, it may present such facts to the General President for authority to refuse to accept such persons as members. The General President shall consider all the facts and circumstances and render a decision in the matter, subject to appeal to the General Executive Board, which shall be binding on such Local Unions.

(d). The foregoing provision shall apply with equal force to so-called "venders" and "owner-equipment drivers." A "vender" is a person who purchases products and sells the same on his own behalf. An "owner-equipment driver" is a person who, in connection with his employment, uses equipment sold or leased to him by his employer or equipment which he has purchased independently but which he uses in whole or in part in the service of

his employer. When such persons apply for membership in the International Union, the Local Union and the International Union shall have the right and authority as a condition precedent to membership to approve or disapprove of any contract pertaining to such form or similar form of employment.

(e). All contracts hereafter renewed or entered into, pertaining to such form or similar form of employment, shall likewise be subject to such approval or disapproval of the Local Union and International Union. If, in the judgment of the Local Union or International Union, such employment contract will constitute a reduction in the union wage scale then prevailing for such service without "owner equipment," the same shall not be approved by the Local Union and such persons shall be ineligible to membership or, if a member, shall cease to work under such conditions or be subject to suspension or expulsion by the Local Union or International Union.

(f). The General Executive Board is empowered when necessity arises to change, alter and amend any provision of paragraphs (b) through (e) inclusive of this section.

Subversive Elements Barred From Membership

Section 3. (a). No member of the Communist Party or other subversive organization, nor any person who subscribes or lends support to their doctrines, shall be allowed to hold membership in any Local Union of the International Organization. If by false statements such individual has obtained membership he shall be expelled. It is not necessary that the individual charged with membership in the Communist Party or other subversive organization admit his

membership in said party or organization. If the Local Union Executive Board, by majority vote, is satisfied by the evidence presented that the individual is a member of the Communist Party or of any other subversive organization, or subscribes or lends support to their doctrines, the Local Union Executive Board shall expel such individual after he has obtained a proper trial, in accordance with our laws.

(b). The action of the Local Union Executive Board is final and binding, with the understanding that either party has the right to appeal in accordance with this Constitution and subject to the following provision:

(c). If, in the opinion of the General President, the above section has not been complied with in principle and intent by the Local Union or its executive officers, he or someone appointed by him or acting for him, shall be empowered to reopen and review the case and, if he deems it advisable, he or his representative shall be empowered to transfer the case to the General Executive Board. If the General Executive Board returns a decision of guilty, the decision shall be final and binding.

Eligibility to Office

Section 4. To be eligible for election to any office of a Local Union or the International Union a member must be in continuous good standing for a period of two (2) years prior to nomination for said office and must have worked at the craft as a member for a total period of two (2) years. This does not apply to officers of newly organized Local Unions, except as follows: In Local Unions organized for less than two (2) years an individual must be a member and in continuous good standing and must have worked at the craft as a member for at least half of the period of time since the Local Union was

chartered by the International Union. The requirement of having worked at the craft as a member shall not be construed to prevent any member holding Local Union office or employed as a full-time organizer for the International Union at the time of the 1952 convention from continuing in office for the balance of the term thereof, or to prevent him from being eligible for subsequent elections to office in a Local Union or to election for office in the International Union. To be eligible to hold office in a Local Union a member must be a citizen of the country in which his Local Union is located. Officers under this section shall also include members of Local Union Executive Boards, business representatives of Local Unions, delegates to central bodies, and delegates to all conventions of labor, other than the conventions of the International Brotherhood of Teamsters.

Article III

CONVENTION AND REPRESENTATION

Conventions

Section 1. The International Convention shall be the supreme governing authority of the International Union and shall have the plenary power to regulate and direct the policies, affairs, and organization of the International Union.

The conventions of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be held in 1957 and thereafter every five (5) years at such time and at such place as may be designated by the General Executive Board upon the recommendation of the General President. The General Secretary-Treasurer shall issue a call for the convention not less than two (2)

months prior to the date of meeting. In the event of an emergency as determined by the General Executive Board which prevents the holding of a convention in accordance with the provisions herein set forth, the same shall be held as soon thereafter as possible, in accordance with the intent and spirit of this Constitution.

Basis of Representation

Section 2. Each Local Union having seven hundred and fifty (750) members or less shall be entitled to one (1) delegate, and one (1) delegate for each additional seven hundred and fifty (750) members or majority fraction thereof, but in no case shall a delegate have more than one (1) vote. No proxy vote will be allowed. (See also Article VII, Section 5).

Requisites for Representation

Section 3. (a). No Local Union shall be entitled to representation in the convention that has not been chartered, affiliated and in good standing for six (6) months prior to the opening of the convention, and each Local Union to be entitled to said representation must have paid into the International Union Treasury six (6) consecutive months' per capita tax.

(b). All moneys due the International Union, whether by per capita tax or otherwise, must be received at least three (3) days prior to the opening of the convention.

(c). The General Executive Board is empowered to grant full representation to any Local Union which has been affiliated with the International Union for less than six (6) months when such Local Union was formerly an independent Local Union or was formerly affiliated with an Interna-

tional Union other than the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Expenses of Delegates

Section 4. Each Local Union shall pay the expenses of its delegates to the International Convention.

Election of Delegates and Alternates

Section 5. All delegates to the International Convention shall be selected by vote at a regular or authorized meeting of the Local Union, or such delegates may be appointed by the Executive Board of the Local Union if so authorized by a vote of the Local Union membership at a regular or authorized meeting. All convention delegates, except substitute delegates, shall be selected during the period from the receipt by the Local Union of the convention call up to the thirtieth (30th) day preceding the first (1st) day of the convention. In the event of disability of a delegate selected by a Local Union to attend the convention, the Executive Board of that Local Union may appoint a substitute to replace such delegate. Each delegate or substitute must be an active member working at the craft. This, however, must not be construed so as to bar the selection of salaried officers of Local Unions or officers of the International Union. All International Officers, Organizers and Auditors who have worked continuously for one (1) year or more shall be entitled to all the privileges of regularly credentialed delegates; provided that this shall not be construed to make eligible for International Office an organizer or auditor who is not otherwise eligible through having worked at the craft for such

a length of time as to have made him eligible for International Office as in this Constitution provided.

Credentials

Section 6. (a). The secretary-treasurer of each Local Union shall, immediately after the selection of delegates, forward their names to the General Secretary-Treasurer, who shall publish a list of delegates. Each delegate shall present his credentials, properly signed by the president and secretary-treasurer, and the seal of the Local Union shall be impressed thereon. He shall also present his membership card, establishing that he is a member in good standing and entitled to a seat in the convention.

(b). All credentials must be in the General Office thirty (30) days prior to the opening of the convention.

Committee on Credentials

Section 7. (a). The General President shall, preceding each convention, appoint from the delegates-elect a committee of seven (7), no two (2) from any one (1) state or province, to act as a committee on credentials. Said committee shall meet at the place of holding the convention five (5) days prior to the opening of the convention. The General President or his representative and General Secretary-Treasurer shall also be members of said committee. To this committee shall be referred all credentials. This committee shall have its report in writing ready for the convention when it opens.

(b). The seven (7) appointive members shall receive as compensation for the extra five (5) days' service the same remuneration for services as is paid to the General Executive Board members and organizers, including regular hotel expenses.

Amendments to Constitution; Resolutions

Section 8. (a). Thirty (30) days prior to each convention, Local Unions, members in good standing, or the general officers shall have the right to send to the General President of the International Union proposed amendments or additions to the Constitution, or resolutions, which shall be submitted to the Committee on Constitution when it meets. This shall not deprive delegates to the convention of their right to propose amendments or additions to the Constitution, or to submit resolutions during the sessions of the convention in accordance with rules governing the convention.

(b). Amendments to the Constitution shall be adopted by a two-thirds (⅔) vote of the delegates present in convention assembled. Duly adopted amendments shall become effective immediately upon their adoption unless otherwise specified in any particular amendment adopted by the convention. This amendment to Article III, Section 8 (b), shall become effective immediately upon adoption.

(c). The General Executive Board shall have the power, following convention adoption of amendments to this Constitution but prior to printing thereof, to make such corrections, typographical, grammatical, punctuational or otherwise, including the supplying or remedying of inadvertent omissions or errors, as are necessary to carry out the spirit and intent of any amendments so adopted.

Quorum

Section 9. A quorum shall consist of a majority of the delegates seated in the convention.

Article IV

OFFICERS, DELEGATES AND ELECTIONS

International Officers

Section 1. (a). The officers of the International Brotherhood of Teamsters shall consist of a General President, General Secretary-Treasurer, thirteen (13) Vice Presidents, and three (3) Trustees. The General President, thirteen (13) Vice-Presidents and General Secretary-Treasurer shall constitute the General Executive Board. In the case of a vacancy occurring between the time of the convention and December 1 of such year in any International Union Office, such vacancy shall be filled by the officer-elect to the position vacated. The provisions of this Article IV, Section 1 (a), excepting the provisions with respect to the filling of the vacancy, shall not become effective until December 1, 1957.

(b). Vice-Presidents shall be known as First, Second, Third, etc., in accordance with their seniority on the General Executive Board.

(c). Not more than two (2) officers from any one (1) city can be elected to hold a position entitling him to a seat on the General Executive Board. The officers of the International Union shall as near as practicable be uniformly distributed throughout the entire country.

Election of Officers and Delegates

Section 2. The election shall be in charge of a Committee on Rules appointed by the President of the convention, and all officers shall be installed on the last day of the convention and assume their official duties on December 1, following the adjournment of the convention. All nominations for International Officers shall be made in open con-

vention and elections shall be by roll call where there is more than one (1) candidate for any office. It shall require a majority of all votes cast to constitute an election; at every unsuccessful ballot the candidate receiving the lowest number of votes shall be dropped until an election takes place. This shall not apply to Trustees or American Federation of Labor-Congress of Industrial Organizations delegates, but in their election each delegate must vote for three (3) candidates for Trustees and the number of American Federation of Labor-Congress of Industrial Organizations delegates decided upon by the convention, and the candidates receiving the highest number of votes shall be declared elected.

Delegates to Conventions of American Federation of Labor; Reports; Expenses; Unit Rule

Section 3. (a). At each convention of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, there shall be elected as many delegates to the American Federation of Labor-Congress of Industrial Organizations conventions as the membership of the International Union permits. Said delegates shall make a full report of said convention to the General Executive Board in writing and to the general membership through the Official Journal within sixty (60) days.

(b). The expenses of the above delegates shall be paid by the International Union, the amount to be determined by the General Executive Board, with fare to and from the convention and no longer time shall be consumed than is necessary to make the trip. The General President and General Sec-

retary-Treasurer shall act as delegates to the convention of the American Federation of Labor-Congress of Industrial Organizations by virtue of their office.

(c). The unit rule shall prevail in all votes cast amongst the delegates representing the International Union at the American Federation of Labor-Congress of Industrial Organizations and department conventions.

Article V

OFFICERS' SALARIES AND EXPENSES

Section 1. (a). The salary of the General President shall be fifty thousand dollars ($50,000.00) per year; the salary of the General Secretary-Treasurer shall be fifty thousand dollars ($50,000.00) per year.

(b). The Vice-Presidents, other than Vice-Presidents who are full time organizers, shall receive a salary of five hundred dollars ($500.00) per month as compensation for attending board meetings, and representing the interest of the International Union, and the three (3) Trustees, if not full-time organizers, shall receive a salary of three hundred dollars ($300.00) per month as compensation for performing their duties as Trustees. When engaged in other duties under orders from the General President, the Vice-Presidents and Trustees who are not full-time organizers shall, in addition, receive the same prorata salary as organizers, but in no event shall their salary from the International Union exceed twenty thousand dollars ($20,000.00) per year. The provision of Article V, Section 1 (b), relating to the salary of the Trustees, shall not become effective until December 1, 1957.

(c). The person holding the office of Executive Assistant to the General President while working

under orders of the General President shall be paid a sum fixed by the General President and expenses as allowed to other executive officers and organizers.

(d). Organizers while working under orders of the General President shall be paid a sum fixed by the General President for the first year of service. Such salary shall be increased in equal sums for the succeeding two (2) years so that at the end of three (3) years of service the salary shall be twenty thousand dollars ($20,000.00) per year. The provision of Article V, Section 1 (d), with respect to salaries, shall not become effective until December 1, 1957.

(e). The General President, General Secretary-Treasurer, Vice-Presidents, Organizers and other executive officers of the International Union shall be allowed seven dollars and fifty cents ($7.50) per diem for incidental expenses. All organizers other than special organizers shall be allowed the sum of two hundred dollars ($200.00) per month as automobile expenses. All executive officers, organizers and others working outside of their home city, or when travelling in the interest of the organization, shall receive their fare in addition to the above named sum to and from their destination, and in addition shall receive a sum of twenty-five dollars ($25.00) per diem. The provision of Article V, Section 1 (e), with respect to per diem allowances shall not become effective until December 1, 1957.

(f). All special organizers' salaries and expenses shall be determined by the General President, subject to the approval of the General Executive Board.

(g). All salaries or powers to establish them shall be determined by the convention prior to election of officers.

Travel Provisions

Section 2. The General President, for the purpose of promoting the interests and welfare of the International Union and the making of diplomatic contacts with other organizations and institutions, and for the purpose of conserving his health, may in his discretion travel in this country or, with the approval of the General Executive Board, abroad and may take periodic rests. The General Executive Board shall provide for all expenses of the General President when performing the services mentioned herein or when taking periodic rests; the said expenses shall include travel in this country and abroad, the full and complete maintenance of his wife so that she can accompany the General President, and all secretarial help and services which he deems necessary while engaged as afore referred to. The expenses provided for herein are in addition to all other constitutional compensation and allowances.

Article VI

GENERAL PRESIDENT—DUTIES AND POWERS

General Duties

Section 1. (a). The General President shall preside at the Convention of the International Brotherhood of Teamsters and conduct the same in conformity with this Constitution. He shall have the deciding vote in case of a tie on any question that is being voted on by the convention, and shall act to the best of his ability in furthering the interests of the organization. He shall fill any vacancy among the general officers, subject to the approval of the majority of the General Executive Board.

(b). The General President shall have general supervision over the affairs of the International

Union, which shall be conducted in accordance with the Constitution and subject at all times to review and approval of the General Executive Board.

(c). The General President shall devote his entire time to the service of the International Union.

(d). It is understood, however, that this shall not prohibit or prevent him from accepting a call to service by the government of the United States; and if such call is made and he believes that it is in the best interests of the International Union to accept, his position and remuneration as now outlined in the Constitution shall not be interfered with and shall continue.

(e). The General President may, without the approval of the General Executive Board, appoint a member of the International Union to the Office of Executive Assistant to the General President, who shall receive a salary for the term of his appointment as set forth in Article V, Section 1 (c).

(f). The General President, with the approval of the General Executive Board, shall be empowered to appoint and fix the salaries of one (1) or more Assistants to the General President to carry on his work if he deems it necessary.

(g). The General President when so requested by the Executive Board of a Local Union, shall have authority in his discretion to direct that a referendum vote be held by the membership of any Local Union in respect to any question or situation where a vote of the membership is required either under this Constitution or the Constitution or by-laws of the Local Union involved.

Judicial Powers

Section 2. (a). He shall have authority to interpret the Constitution and laws of the International

Union and to decide all questions of law thereunder between meetings of the General Executive Board, and shall have authority, unless some other procedure is expressly provided in this Constitution, to settle and determine all grievances and disputes submitted to him by Joint Councils, Local Unions, and other subordinate bodies, between meetings of the General Executive Board, all subject to appeal to the General Executive Board, and, thereafter to the next Convention in the manner and to the extent prescribed in this Constitution. When any action is taken as provided herein between meetings of the General Executive Board such action shall be reported to the next meeting of the General Executive Board for its approval, reversal or modification, if an appeal has been taken.

(b). When the General President makes a decision or orders a Local Union to observe the laws, and the Local Union refuses, the Local Union shall be subject to suspension or revocation of charter by the General Executive Board.

Arbitration; Procedure; General President Empowered to Submit Question of Arbitration to General Executive Board When Satisfied That Local Union Is Not Justified in Rejecting Arbitration

Section 3. In any controversy with an employer, not covered by a Local Union agreement, the Local Union shall make all reasonable efforts to settle the same through negotiation and, if it fails, through a fair arbitration tribunal. If an employer offers to arbitrate, it shall be optional with the Local Union to accept or reject such arbitration. However, if the Local Union rejects arbitration and the matter is brought to the attention of the General President, he shall ask the officers or representatives of the

Local Union to appear before him or his representative or in some other manner to explain their reasons for refusal. If the General President is satisfied that the Local Union is not justified in refusing arbitration, then the General President shall submit the matter to the General Execuive Board, and if the General Executive Board is of the opinion that the Local Union should arbitrate it may so decide, whereupon the Local Union shall proceed to carry out the decision of the General Executive Board.

Approval of By-Laws of Local Unions

Section 4. By-Laws of Local Unions and other subordinate bodies and amendments thereto shall be subject to the approval of the General President. If the General President fails to approve the by-laws, the matter may be referred by the subordinate body to the General Executive Board for its determination.

Power of General President To Appoint Trustees and Duties and Obligations of Local Unions Under Trusteeship

Section 5. (a). If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organizations are not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or are being conducted in such a manner as to jeopardize the interests of the International Union, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body; provided, however, that before the appointment of such temporary Trustee, the General President shall

set a time and place for a hearing for the purpose of determining whether such temporary Trustee shall be appointed, and further provided that where, in the judgment of the General President that an emergency situation exists within the Local Union or other subordinate body, the temporary Trustee may be appointed prior to such hearing, but such hearing shall then commence within thirty (30) days and decision made within sixty (60) days after the appointment of such temporary Trustee; and further provided that in all cases the Local Union or other subordinate body shall be advised of the reasons for the appointment. Adequate notice, at least ten (10) days prior to the date of the hearing, shall be given to the Local Union or other subordinate body involved. In the case of all hearings conducted pursuant to or after the establishment of a Trusteeship, the General President shall designate a panel comprised of at least one (1) International Union Vice-President and one (1) disinterested member of the International Brotherhood of Teamsters from the area involved. Such representatives shall make their recommendations to the General President, orally or in writing within ten (10) days after the completion of the hearing, and the decision in the case shall be made by the General President himself, which decision shall be made within ten (10) days after such recommendations are received by him and such decisions shall be promptly transmitted to the Local Union or other subordinate body. Appeals, if any, from determinations following such hearings shall be taken directly to the General Executive Board. Appeals, if any, from decisions of the General Executive Board shall be taken to the Convention by the Local Union or subordinate body affected. Procedures on appeals under this Section, insofar

as is consistent with this Section, shall be governed by the provisions of Article XVIII. The International Union shall not be responsible for any actions or activities of a local union or other subordinate body under Trusteeship unless such actions or activities have been directed or authorized by the Trustee.

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or other subordinate body, to remove any or all officers and shall within sixty (60) days appoint temporary officers during his Trusteeship, and to take such other action as in his judgment is necessary for the preservation of the Local Union or other subordinate body and their interests. He shall report from time to time on the affairs and transactions of the local union or other subordinate body to the General President. His acts shall be subject to the supervision of the General President. The General President may remove Trustees at any time and may appoint successor Trustees. The terms of office of officers so removed shall terminate as of the date of removal, unless otherwise absolved.

(c). The removed officers shall turn over all moneys, books and properties of the Local Union or other subordinate body to the Trustee, who must receipt for the same.

(d). Temporary officers and trustees must be members in good standing of Local Unions in good standing. They must give bonds for the faithful discharge of their duties, satisfactory to whoever appointed them, which shall not be less than the amount of money they are apt to handle.

(e). The Trustee shall take possession of all the funds, books, papers and other property of the Local Union or other subordinate body and tender a receipt for same. He shall pay all outstanding

claims, properly proved, if funds are sufficient. If the funds are not sufficient he shall settle the most worthy claims, as his judgment dictates, unless otherwise provided for in this Constitution. In the event the charter of the Local Union or other subordinate body is suspended or revoked, all its funds, books, papers and other properties shall be forwarded to the General Secretary-Treasurer, who shall hold it for the purpose of reorganization. If no reorganization occurs within a period of two (2) years, such funds shall be transferred to the general funds.

(f). In all cases of Trusteeships, the Trustee shall make a report to the General President at intervals of no more than every six (6) months which report shall contain his recommendations with respect to whether the Trusteeship shall be continued or terminated.

The first (1st) such report shall be made within six (6) months after the date of the decision following the hearing on the appointment of a Trustee.

Additionally, the Local Union, or other subordinate body in regular or special membership meeting by a majority vote, may petition the General President for the restoration of self-government provided that no such petition shall be presented at intervals of less than six (6) months starting with the date of the decision following the first hearing on the appointment of the Trustee.

When a Local Union or other subordinate body petitions for restoration of self-government as herein provided, it shall be accorded a hearing which shall be commenced within thirty (30) days and decision made within sixty (60) days after the receipt of the petition and which shall be held in the same manner as provided in Section 5 (a) of this

Article relative to hearing on initial appointment of Trustees.

No temporary Trusteeship shall continue more than two (2) years after the date of the decision following the first (1st) hearing on the appointment of a Trustee, unless the General Executive Board, upon a showing satisfactory to it and set forth in a written decision, determines that such Trusteeship be continued under such terms and conditions and for such further period it believes advisable. When the Trustee recommends self-government be restored, or when the Local Union or other subordinate body petitions for such restoration, and such restoration is approved and ordered by the General President, or General Executive Board, or when the General President or General Executive Board direct that self-government be restored, the Trustee shall direct an election at such time as he may designate, any other provision of this Constitution or Local Union rules or by-laws to the contrary notwithstanding and following such election and installation, the Trusteeship shall terminate and the Trustee shall return all remaining funds, property, books and papers to the appropriate officers of the Local Union or other subordinate body.

Removal of International Union Organizers

Section 6. The General President, when he deems it for the best interests of the International Union, is hereby empowered to remove any International Organizer or Conference Chairman with the approval of a majority of the General Executive Board.

Official Journal

Section 7. (a). The official Journal shall be published under the supervision of an editorial staff of not less than two (2) members selected by the

General President and approved by the General Executive Board, such staff to work under the direction of the General President, but to be responsible to and guided in its policies by the General Executive Board. A copy of the Journal shall be sent directly to each member in good standing who may furnish his name and address to the General President through the Local Union Secretary-Treasurer. The General President shall be empowered to employ such help as he may need to carry on this work.

(b). The Local Union Secretary-Treasurer shall at reasonable intervals provide the Office of the General President with current lists of members in good standing so that they may receive the Journal.

Vacancy in Office of General President

Section 8. The First Vice-President shall, without additional compensation, assume the duties of the General President in case of death, disability, resignation or removal of that officer, until such time as a Special Convention shall elect a General President who shall hold office for the balance of the unexpired term. The First Vice-President, within five (5) days after assumption of the duties of the General President, shall convene the General Executive Board for the purpose of calling such Special Convention, which shall take place within sixty (60) days thereafter. The General Executive Board shall establish the rules and procedures for the calling and holding of such Special Convention. However, if the vacancy occurs within six (6) months of the next regular convention then instead of a Special Convention the regular convention shall be convened at the earliest possible date. Vacancies, if any, in the office of the General President, between the time of election and December 1, of such

year, shall be filled by the President-elect, effective as of the date the vacancy occurs.

Article VII

GENERAL SECRETARY-TREASURER—DUTIES AND POWERS

General Duties

Section 1. The General Secretary-Treasurer shall be custodian of all of the properties, funds, securities, and assets of the International Brotherhood of Teamsters wherever located. He shall conduct all financial correspondence involving or affecting the International Union and all financial correspondence between the International Union and any affiliate or subordinate body of the International Union, and his signature shall, as a ministerial act, be required on all instruments, documents, deeds or other papers of any nature whatsoever requiring or involving the investment of any of the funds of the International Union. The General Secretary-Treasurer shall keep a correct record of the proceedings of the conventions of the International Union and of each meeting of the General Executive Board, preserve all important documents, papers, letters received and copies of all important letters involving the International Union and which pertain to the functions and responsibilities of the Office of the General Secretary-Treasurer. He shall supply each delegate to any convention of the International Union with a copy of the correct record of the proceedings of any such convention, and shall supply each member of the General Executive Board with a correct copy of the record of the proceedings of each meeting of the General Executive Board.

Section 2. (a). The General Secretary-Treasurer shall have primary responsibility for the payment

from the general fund of all financial obligations, commitments and expenditures of the International Unior. Requests or requirements for payments from the general fund shall be submitted to the General Secretary-Treasurer and shall be supported by written authorization in the form of statement, bill, invoice, voucher, disbursement authorization or similar written instrument. All such requests or requirements for payment from the general fund as indicated above shall, prior to payment, be reviewed and approved as to the validity of such claim by the General President and as to the adequacy of supporting data by the General President and the General Secretary-Treasurer or by representatives duly appointed by each, provided such representatives are appropriately bonded. Following approval as above the General Secretary-Treasurer shall make payment by check under his individual signature for the following classes of financial obligations of the International Union:

(1) Routine or recurring expenditures incurred in the operation of the General President's and General Secretary-Treasurer's office, such as general office expense, administrative and clercial salaries, building maintenance expenses, salaries or compensation of officers, organizers and other representatives or staff members of the International Union, including expenses of such individuals as authorized by the International Constitution, real and personal property taxes, and other types of taxes, interest payments, and all other similar regularly recurring expenses of the International Union, provided that the General Executive Board shall first have given general authorization for payment of such type of financial obligations.

(2) Expenditures such as strike benefits, or advances or payments to Conferences, Trade Divisions, Local Unions or Joint Councils and other similar specific expenditures all of which, however, have, prior to payment thereof, been specifically authorized by the General Executive Board or this Constitution.

(b). All expenditures from the general fund, other than those provided in 2 (a) above, necessary to the operation of the International Union, shall be approved by the General President and General Secretary-Treasurer. In the event of disagreement between the General President and the General Secretary-Treasurer concerning the making of any payment the matter shall be submitted to the General Executive Board for determination, which determination shall be final and binding.

(c). The General President and General Secretary-Treasurer and all other representatives or employees of the International Union who handle any funds of the International Union or subordinate body thereof or are involved in the making of any expenditures from the general fund shall be bonded in amount sufficient to protect the International Union.

(d). In event of the incapacity of any person authorized by this Constitution to sign checks or documents, the General Executive Board shall designate another person to exercise such authority.

Issuance of Charter

Section 3. Application for charter shall be made to the Joint Council or to the Conference if there is no Joint Council, who shall forward it to the General Secretary-Treasurer who shall sign, issue and deliver a charter to the Local Union upon receipt of the following contract, which must be signed by the

Secretary-Treasurer of the Local Union and the Joint Council Secretary.

All charter applications must be signed by no less than seven (7) members employed within the jurisdiction of the International Union, and must be jointly approved by the General Secretary-Treasurer and General President and a majority of the General Executive Board.

Affiliation with and the issuance of a charter by the International Union and compliance with all the provisions and requirements of this International Constitution are in no way conditional upon the affiliation or non-affiliation of the International Union with any other organization either at the time of the issuance of a charter or subsequent thereto.

Charter Contract

Know all men by these presents, that I, ..., Secretary-Treasurer of the ..... Local Union ....., located at ....., being authorized to act for said Local Union, in consideration of the General Secretary-Treasurer issuing a charter to said Local Union hereby agree: That said charter shall remain the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and in consideration of the premises herein stated, agree that when charter is framed, the frame shall immediately become the property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Said Local Union shall have custody of said charter until it is demanded by some person authorized to make such demand, in accordance with this Constitution; and the charter and frame

shall then be delivered to the person so authorized to demand and procure the same; and it is further agreed that any person so authorized may enter any premises occupied by the said Local Union or any of its members and take possession and remove the said charter.

I do further recognize and acknowledge in behalf of Local Union ..... that the name and all rights and privileges hereunder, are granted this Local Union by the International Union, and that all books, documents, contracts, name, moneys, funds and property of any nature and description which may be obtained, accumulated and maintained by this Local Union will result, be obtained, accumulated or maintained by the granting of this charter and the rights and privileges thereunder, therefore, in the event this charter is revoked, upon such revocation, all books, documents, contracts, name, moneys, funds and property shall belong to and shall be delivered over to the International Union by it to be retained, as provided for in Article X, Section 15 thereof, until the charter is reinstated or a successor Local Union or Local Unions are chartered.

I do further agree in behalf of Local Union .... that it will abide by the provisions of the International Constitution and amendments thereto, all of which are incorporated herein by reference.

.....

By its Secretary-Treasurer.

Financial Report

Section 4. (a). The General Secretary-Treasurer shall issue semi-annually a financial report summarizing the assets and liabilities of the International Union stating the net worth of that organiza-

tion and also a statement of receipts and disbursements together with a certified public accountant's statement as set forth in Section 1 of Article VIII. Such report shall be published semi-annually in the official Journal of the International Union. At any time a financial report is requested by the General Executive Board, the General Secretary-Treasurer shall furnish such a report consisting of assets, liabilities and net worth of the International Union.

(b). The General Secretary-Treasurer shall furnish the Secretary of each Local Union with a roster, which shall be kept current at least semi-annually, showing the International Officers, Local Unions, Joint Councils, Area Conferences and Trade Divisions of the International Union.

Method of Determining Representation

Section 5. The General Secretary-Treasurer, on sending out credentials, shall figure from June 1, 1960, to four (4) months preceding the opening date of the next convention to ascertain the per capita tax paid by Local Unions; the number of delegates given to Local Unions shall be upon this basis. Where it is not possible to hold the convention at the time prescribed by ARTICLE III, Section 1, because of an emergency, the additional per capita tax payments involved shall be taken into consideration in computing the average monthly membership for the determination of the number of delegates to which the Local Union shall be entitled (See also Article III, Section 2).

Finances

Section 6. (a). The General Secretary-Treasurer shall receive all moneys due from Local Unions and other sources, giving his receipt therefor. All moneys shall be placed in banks approved by the

General Executive Board in the name of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(b). At least twenty-five (25%) per cent of the funds and assets of the International Union (exclusive of real estate, buildings and furnishings) shall be kept in interest-bearing bank accounts and short-term government obligations as directed by the General Executive Board.

Staff and Audits

Section 7. The General Secretary-Treasurer may appoint International Auditors and their salaries per diem and expenses shall be fixed in accordance with the provisions of ARTICLE V, Sections 1(d) and (e), the number of such auditors to be determined by the General Executive Board. The General Secretary-Treasurer, when he deems it for the best interest of the International Union, is hereby empowered to remove any International Auditor, with the approval of the majority of the General Executive Board. Local Unions, Joint Councils, Conferences or subordinate bodies and joint operations which receive any donations, advances, matching funds or special payments of any nature from the International Union shall keep full financial records respecting the same and the manner in which they are expended. The books of every Local Union, Joint Council, Conference, and joint organizing fund shall be audited by a certified public accountant at least once a year, at its expense, and by the International Union every two (2) years. Copies of the annual audit shall be forwarded to the General Secretary-Treasurer and such information as necessary to comply with U. S. Internal Revenue Form 990 shall be made available to the membership of the subordinate bodies. If the subordinate bodies fail to

make an annual audit the International Union shall do so.

Notification of Local Unions in Arrears

Section 8. It shall be the duty of the General Secretary-Treasurer to notify the Secretary-Treasurer, the President and the three (3) Trustees of the Local Union when said Local Union becomes in arrears for per capita tax.

Seals; Stamps; Supplies

Section 9. (a). The General Secretary-Treasurer shall procure all seals, stamps and supplies and furnish same to all Local Unions desiring them. (It shall become compulsory upon all Local Unions to procure from the International Union, with the exception of letter paper and envelopes, all supplies handled by the International Union, as listed from time to time on International Union order blanks furnished for that purpose.)

(b). Individual members or Local Unions, shall not have the power to duplicate the stamps, buttons or paraphernalia issued by the International Union. Permission may be granted by the General Executive Board to subordinate bodies to have stationery and other minor supplies procured in their several localities.

Other Duties

Section 10. The General Secretary-Treasurer shall perform such other duties as are required of him by this Constitution.

Article VIII

TRUSTEES—DUTIES

Audit of Books

Section 1. The Trustees shall audit the books of the General Secretary-Treasurer on the first (1st)

of January and July of each year, utilizing the assistance of certified public accountants designated by the General President, and report their findings immediately to the General President, and he shall, in turn, report to the General Executive Board. Such audit of the books of the General Secretary-Treasurer shall include the books respecting all properties and facilities under the custodianship of the General Secretary-Treasurer. A copy of such semi-annual reports of the Trustees shall be furnished to the members of the General Executive Board.

Fiscal Year

Section 2. The fiscal year shall commence on the first (1st) of January.

Article IX

GENERAL EXECUTIVE BOARD—DUTIES AND POWERS

General

Section 1. Such powers, duties and authority as are not otherwise delegated to the officers of the International Union shall be exercised, acted upon, and determined by the General Executive Board. The General Executive Board shall have the authority to interpret and apply the Constitution and laws of the International Union, and to decide on all questions of law thereunder subject to appeal to the next convention.

Revocation and Suspension

Section 2. (a). Unless otherwise provided in this Constitution, the General President, or General Secretary-Treasurer, when they deem it necessary to suspend or revoke a charter, shall immediately notify the members of the General Executive Board, for their approval of same.

(b). Any Local Union suspended by the General Executive Board shall lose, for the period of its suspension, all privileges of the International Union and the local central labor body shall be notified to exclude its delegates.

Power To Debar From Membership

Section 3. (a). The revocation or forfeiture of a charter of a Local Union for any cause whatsoever shall permit the loss of membership in the International Union of all members of the Local Union whose charter was revoked or forfeited. Upon reorganization of such Local Union the General Executive Board shall have the power to exclude from membership, in the new Local Union, persons who were in any way responsible for the revocation or forfeiture of the charter or who, the General Executive Board has reason to believe, are disloyal to the International Union or who may cause disruption in the newly organized local union.

(b). With respect to new applicants to any Local Union the General Executive Board shall have power to deny membership, in the International Union, to any such applicant when it believes the interest of a Local Union or the International Union will be best served by so doing.

Trial of Member Assaulting General Officer or Organizer

Section 4. Any member or number of members of a Local Union assaulting or injuring a general officer, or organizer, shall be tried and if found guilty punished by the General Executive Board on such charge in the same manner as hereinafter provided for other trials and punishments by the General Executive Board. If he is found not guilty, his expenses to the place of the General Executive Board meeting shall be paid by the General Office.

If he is found guilty he shall be disciplined as the judgment of the General Executive Board dictates and his expenses shall not be paid. If he desires not to attend his trial, he may submit his answer or defense in writing to the Board.

Meetings of General Executive Board

Section 5. The General Executive Board shall hold quarterly meetings at such specific time and place as shall be determined by the General President. Upon the written request of a majority of the General Executive Board to the General President it shall be the duty of the General President to call a meeting of the General Executive Board within thirty (30) days. A majority of the members of the General Executive Board shall constitute a quorum for the transaction of its business. The provision of ARTICLE IX, Section 5, with respect to meetings of the General Executive Board, shall not become effective until December 1, 1957.

Action When Not in Formal Session

Section 6. In all matters requiring action by the General Executive Board, and when the General Executive Board is not in formal session, the General Executive Board may act by telegram, letter or long distance telephone. When the General President requires action by the General Executive Board, he may obtain the same by telegraphing, writing or telephoning to the members of the General Executive Board, and such members may take action on the matter brought to their attention in the same manner; provided, however, that whenever action is sought by any of the foregoing methods, all members of the General Executive Board shall be polled and the action of each individual member

shall be made known to the remaining members of the General Executive Board; and, provided further, that in respect to any action obtained by telephone such action shall be by conference telephone call and shall immediately be confirmed by the individual member taking the same by written letter. Such action so taken by the majority of the members of the General Executive Board shall constitute action of the General Executive Board as though the General Executive Board were in formal session; provided, however, that any such action shall be confirmed at the next formal session of the General Executive Board.

Special Conventions

Section 7. Special conventions may be called when a majority of the members of the General Executive Board deem it necessary. The General Executive Board shall establish the rules and procedures for the calling and holding of special conventions.

Employment of Clerical Help

Section 8. The General President and General Secretary-Treasurer respectively shall have the power to employ such clerical assistance for their respective departments as may from time to time be necessary. Such help shall be paid reasonable salaries from the general fund, which salaries shall be appropriately classified so as to provide for uniformity of compensation for the general type of work in both departments. All of the foregoing shall be subject to the approval of the General Executive Board.

Retirement Plan

Section 9. The present Trust Agreement, as

amended and as it may be amended from time to time in accordance with the provisions thereof, establishing an International Union Pension Plan as previously authorized, shall remain in effect.

Article X

INITIATION FEES, PER CAPITA TAX, ETC.; BOOK AUDITS OF LOCAL UNIONS

Revenue

Section. 1. The normal operating income of the International Brotherhood of Teamsters shall be derived as follows:

(a). Organization fee, which includes charter, seal and all other organization supplies, fifteen dollars ($15.00).

(b). Sale of other supplies.

(c). From the sale of stamps of the following denominations: initiation stamps, one dollar ($1.00); provided, however, where the initiation fee exceeds twenty-five dollars ($25.00), ten percent (10%) thereof; and monthly dues stamps (per capita) forty cents (40¢).

Assessments for Emergencies

Section 2. Whenever the assets of the International Union, except the headquarter's properties, run below twenty million dollars ($20,000,000) the General Executive Board shall levy an assessment of one dollar ($1.00) per member per month on all Local Unions, until such assets reach twenty-five million dollars, ($25,000,000). Any Local Union failing to pay the assessment shall not be entitled to any of the benefits of the International Organization. After being properly notified and given a reasonable length of time, if the Local Union further

refuses to pay the assessment, said Local Union shall be suspended. Any Local Union failing to pay the assessment shall not be represented at the International Convention.

Payment of Initiation Fees, Reinstatement Fees, and Per Capita Tax

Section 3. (a). Each Local Union shall pay to the General Secretary-Treasurer the sum of one dollar ($1.00) for every initiation fee or equivalent thereof collected up to and including twenty-five dollars ($25.00). When the initiation fee exceeds twenty-five dollars ($25.00) there shall be paid to the International Union ten per cent (10%) of the total initiation fee.

(b). Each Local Union shall pay to the General Secretary-Treasurer a per capita tax of forty cents (40c) per month, payable for the current month, not later than the tenth (10th) day of the succeeding month.

(c). All reinstatement fees paid into the Local Union shall be figured as monthly dues and the per capita tax must be paid on the same. The General Secretary-Treasurer shall receipt for all initiation fees and per capita tax by giving stamps of the above-named denomination.

(d). Area Conferences shall be financed by the payment of a monthly five cent (5c) per capita tax by the International Union to the Area Conference. Local Unions affiliated with Area Conferences shall pay a minimum of five cents (5c) per month per member to their respective Area Conferences. The provisions of Article X, Section 3 (d), shall not become effective until December 1, 1957.

Per Capita Tax; Preferred Payment

Section 4. Per capita tax due the International

Union each month shall be paid before the payment of any other bills or obligations of the Local Union.

Payment of Dues and Fees and Receipt Therefor

Section 5. (a). Any member paying his initiation fees, monthly dues or reinstatement fees shall receive stamps from the Local Union Secretary-Treasurer or his authorized representative who shall carefully paste the same on the space provided for in the member's official dues book, and cancel the stamps with the dater provided for this purpose and affix his signature (on the date the initiation fees, monthly dues, or the reinstatement fees are paid) and said stamps shall at all times be acknowledged as a receipt for payment in full for all amounts, as designated by the stamps. The foregoing shall be required only where the dues book system is still in effect. Where the prescribed accounting machine system is in use, the initiated member shall be issued an identification card and receipt for the payment of the initiation fee; payment of dues and reinstatement fee shall be acknowledged by machine receipt.

(b). Any member refusing to turn in his due book or identification card when requested shall be liable to a fine or suspension upon his Local Union Executive Board taking such action.

(c). All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Where membership dues are being checked off by the employer pursuant to properly executed checkoff authorization, it shall be the obligation of the member to make one (1) payment of one (1) month's dues in advance to insure his good standing. Thereafter, he shall remain in good standing for each consecutive month

for which the monthly check-off is made. Any member failing to pay his dues at such time shall not be in good standing. Any member who shall be three (3) months in arrears in the payment of dues, fines, assessments, or other charges, at the end of the third (3rd) month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the Local Union or International Union. Local Unions may provide suspension or expulsion for lessor period or arrearages.

(d). A Local Union may provide by-laws for the payment of quarterly dues, provided such by-laws are approved by the General President of the International Union. In any instance where a Local Union has provided for the payment of quarterly dues under this Section, any members thereof failing to pay such quarterly dues in accordance with such provisions shall not be considered in good standing.

(e). No other system of receipting for initiation fees, monthly dues or reinstatement fees will be recognized by the International Union.

Orders for Stamps and Supplies

Section 6. All payments of fees and orders for supplies must be made on the regular official remittance statement and supply order blank and all money sent to the General Secretary-Treasurer must be sent by Local Union or cashiers check, post office or express money order.

Reports To Be Furnished by Local Union Secretary-Treasurer

Section 7. The Local Union Secretary-Treasurer shall forward monthly to the General Secretary-Treasurer the names of all members initiated or reinstated, together with those who become suspended for non-payment of dues or for any other cause; also

a correct list of those who take transfer or withdrawal cards, and shall promptly notify the General Secretary-Treasurer upon the death of any member.

Surety Bond

Section 8. (a). All Local Union Secretary-Treasurers, business representatives and others who handle funds and property of the Local Union upon assuming office, or employment, shall immediately procure a suitable surety bond or suitable collateral. Said bond must be procured from a recognized bonding company authorized to do business in the state where the Local Union is situated, a copy of which shall be kept on file at the General Office. The original shall be retained by the Trustees of the Local Union. The General Secretary-Treasurer may direct the increase or decrease in the amount of the bond when he deems it necessary and advisable.

(b). Any Local Union Secretary-Treasurer or business representative failing to obtain or secure or provide a suitable surety bond or suitable collateral satisfactory to the General Secretary-Treasurer or the General Executive Board shall automatically be deprived of holding any office for which a bond is required. Local Union officers failing to comply with this section shall subject the charter of such Local Union to suspension or revocation. The General President or the General Executive Board shall be empowered to suspend or revoke the charter of such Local Union for failure to comply with this section.

Filing of Monthly Audits

Section 9 (a). The Trustees of all Local Unions shall send a copy of their audit at least quarterly to the General Secretary-Treasurer, to be placed on file in the Office of the General Secretary-Treasurer.

Books of all Local Unions must be audited monthly by the Trustees.

(b). It shall be compulsory upon the Trustees of all Local Unions or upon such other officer to whom the request is made to furnish such information as may be requested by the General Secretary-Treasurer pertaining to finances and payments on uniform blanks to be furnished for such purpose by the General Secretary-Treasurer.

Deposit of Money

Section 10. It shall be compulsory upon all Local Unions to keep their money deposited in reliable banks in the name of the Local Unions, and all moneys paid out for the Local Union must be paid by check upon the order of the Local Union and signed by at least two (2) elective officers in the manner provided for by the Local Union by-laws.

Audit of Books of Local Unions

Section 11. (a). Any organizer or officer of the International Union may be delegated, instructed and empowered by the General President or General Secretary-Treasurer to audit or to employ auditors to audit the books of any Local Union or Local Unions.

(b). Local Union officers shall give the delegated officer for examination, all books, bills, receipts, vouchers and records, bonds, securities or other evidences of ownership to property or investments, of the Local Union whenever requested.

(c). Any officer of a Local Union refusing to turn over the books, bills, vouchers or records to the delegated officer shall be subject to discipline under the provisions of Article XVIII, likewise, shall be liable to expulsion by the General Executive Board.

(d). Any member refusing to show his due book

or identification card with machine receipt to an authorized representative when asked shall be fined ten dollars ($10.00).

(e). If the officer delegated to audit the books discovers any dishonesty or incompetency in the officers which warrants him in notifying the General President and General Secretary-Treasurer he shall do so and they shall take whatever action they deem advisable. The officers auditing books shall make a monthly report to the General President and General Secretary-Treasurer and shall have full power to go to any bank where a Local Union has its money deposited and investigate, and also get a certified balance sheet from the bank.

Arrearage in Per Capita Tax

Section 12. Where the books of a Local Union have been examined and audited and arrearages to the General Office for per capita are found, same must be paid immediately. No per capita nor initiation stamps will be forwarded covering same, simply a receipt signed by the General Secretary-Treasurer covering the amount of per capita paid.

Penalty for Arrearage

Section 13. Should a Local Union become six (6) months in arrears for per capita tax, their charter shall stand revoked. The General Secretary-Treasurer shall notify all Local Unions when two (2) months in arrears, but failure to receive such notice shall not prevent the suspension of the Local Union, should it become three (3) months in arrears.

Return of Funds, Books and Property Upon Revocation or Dissolution

Section 14. When the charter of a Local Union is revoked, the Local Union or its officers shall be required to turn over all books, documents, property

and funds to the General President or his representative, or to the General Office of the International Union, and should a Local Union secede, disaffiliate or disolve or be disolved, or suspended or forfeit its charter, then all books, documents, property and funds shall likewise be turned over to the General President, or his representative, or to the General Office to be held until such time as the Local Union may be reinstated or reorganized. If no reinstatement or reorganization occurs within a period of two (2) years such funds shall be transferred to the general fund.

Reorganization

Expenses Incurred in Recovering Property and Funds Are Chargeable to Funds or Property Recovered

Section 15. Whenever a Local Union secedes, disaffiliates, or dissolves, or its charter is suspended or revoked, and demand is made upon such organization or its officers to deliver to the General President or his authorized representative the records, property and funds of such organization, and such demand is refused, then all expenses, of whatever nature, incurred by the International Union in recovering such records, property and funds, shall be a lawful charge upon the property and funds involved, and on recovery thereof, the International Union shall reimburse itself from the property and funds recovered. All property and funds shall be held by the International Union until reorganization has been effected and shall be returned to the Local Union when the same has been reorganized. If no reorganization is effected within a two (2) year period, then all properties and funds

of such Local Union shall become the property and funds of the International Union. Reorganization shall be effected by and under the direction of the International Union.

Article XI

FINANCE COMMITTEE—DUTIES

Section 1. There shall be a Finance Committee consisting of seven (7) members of the General Executive Board, namely, the General President, the General Secretary-Treasurer, and five (5) Vice Presidents selected by the General Executive Board. A quorum of the Finance Committee shall consist of any five (5) members thereof. The General Executive Board shall have the power to remove any selected member of the Finance Committee by a majority vote. It shall be the general function of the Finance Committee, by majority vote, to pass upon and approve all investments of the funds of the International Union, and no investment of such funds can be made without such approval. It shall, however, be the specific function of the General President and the General Secretary-Treasurer to make all investments of the funds of the International Union, subject to the foregoing approval of the Finance Committee; and the General Secretary-Treasurer shall at all times keep the General Executive Board advised of all such investments.

No more than fifty thousand dollars ($50,000.00) may be invested in the bonds of, or loaned to, any one (1) corporation or its principal officers or stockholders or its affiliates, directly or indirectly. All investments will be such as may be made by fiduciaries by the laws of the Commonwealth of Massachusetts.

Securities purchased shall be kept in a safety

deposit box or boxes which shall be opened in the presence of the General President or the General Secretary-Treasurer and at least one (1) other member of the Finance Committee.

Section 2. Each member of the Finance Committee shall be bonded in such sum and in such manner as the General Executive Board shall require.

Section 3. The General Executive Board shall be empowered, when it deems it necessary for the maintenance, protection and preservation of the labor movement, to make loans or advances to other labor organizations in a sum not to exceed in the aggregate three per cent (3%) of the total assets of the International Union excluding the headquarters properties. No other loan of any nature whatsoever shall be made from funds of the International Union except upon approval of the Finance Committee and the General Executive Board.

Article XII

STRIKES, LOCKOUTS, WAGE SCALES, DISPUTES OVER JURISDICTION

Strike Action by Local Unions

Section 1. (a). When any difficulty or dispute arises between the members of any Local Union and their employers, it shall be the duty of the officers of such Local Union to use every possible means of achieving a settlement or resolution of the difficulty or dispute through the processes of collective bargaining.

(b). If a settlement cannot be reached the Local Union shall, at a meeting, order a secret ballot to be taken, and it shall require a two-thirds (⅔) majority of all members of the Local Union present to adopt a motion to strike. The ballot must be "Yes" or "No" written on paper ballots. In the

alternative the Local Union, if so determined by the Executive Board of such Local Union, may conduct such strike vote by referendum ballot of the entire membership in which event it shall also require a two-thirds (⅔) majority vote of those responding to the referendum ballot in order to authorize a strike. In any strike situation the General President or the General Executive Board is authorized to direct that strike vote be taken by a referendum ballot.

(c). Prior to a Local Union becoming involved in a strike, boycott, lawsuit or any serious difficulty, such Local Union shall immediately notify the Joint Council of which it is a member of any contemplated action setting forth the action contemplated and nature of the difficulty. The Joint Council shall then take steps to approve or disapprove such contemplated action. The Joint Council shall notify the General President of the steps it has taken in respect to such contemplated action. The General President is authorized to approve, disapprove or modify the action of the Joint Council. Approval, disapproval or modification of the action of the Joint Council or the Local Union by the General President shall not operate to impose any liability on the International Union or its officers or to make them parties to any such action. The International Union does not assume any liability of any nature to any person or persons simply by reason of such approval, disapproval or modification.

(d). The Executive Board of a Local Union may, in its discretion, provide that the strike vote mentioned in Section 1 (b) above, be limited to the members employed in a particular division, craft, or place of employment. In cases of Area Conferences, the provisions of this Article, with respect to strike votes, shall be satisfied if a majority of the Local

Unions affiliated with such Area Conference have voted to strike in accordance with the provisions of this Article, in which event such strike vote shall apply to all such affiliated Local Unions. Strike votes shall not be required in any case where a collective bargaining agreement then in existence authorizes such strike for the purpose of enforcing the terms of such agreement.

Payment of Benefits

Section 2. The General Executive Board shall have the power to pay out the entire International Union's Treasury to a Local Union that is on strike where the General Executive Board has recognized the strike as one properly subject to the payment of the constitutional benefits provided for herein.

Consent of General Executive Board

Section 3. Any Local Union going out upon strike without prior recognition thereof by the General Executive Board as being a strike properly subject to the payments of strike benefits, under the provisions of this Constitution, shall not be entitled to financial benefits from the International Union, provided for by the Constitution, except, however, where less than two hundred (200) employees are involved the General President may approve the strike for the purpose of strike benefits.

Strike Benefits

Section 4. Strike benefits in strikes recognized as properly subject to the payment of strike benefits or relief in cases of lockouts, etc., shall be paid to all members not in arrears for dues in excess of one (1) month and otherwise in good standing, who are members of a Local Union not more than one (1) month in arrears in per capita tax at the rate of

fifteen dollars ($15) per week; provided that whenever the total net assets of the International Union shall reach an amount more than five million dollars ($5,000,000.00) below the amount of such assets as disclosed by the General Secretary-Treasurer's report to the 1952 convention then, and in that event, the rate of strike benefits shall revert back to ten dollars ($10) per week for such period of time as such total net assets shall remain below such amount. Such strike benefits will be payable at the end of the second (2nd) week of the strike or lockout; but in no case shall a fraction of a week's strike pay be allowed nor the first (1st) week of a strike or lockout be paid for, provided that in the last week of a strike the first four (4) days or more of such strike shall be considered a week; any arrearages for dues, and dues one (1) month in advance shall be deducted from the first (1st) payment of benefits and duly credited to the member or members so in arrears so as to maintain such member or members in good standing and preserve his or their rights, if any, to financial benefits. All members shall be entitled to the strike benefits provided for herein for such a period of time as the General Executive Board shall determine.

Requirements for Payment of Strike Benefits

Section 5. (a). No Local Union shall receive strike benefits from the International Union unless the Local Union has been six (6) month in good standing, provided that Local Unions chartered for a period of six (6) months or less prior to applying for strike benefits must have been in continuous good standing from the time of their chartering in order to be eligible for strike benefits. Benefits shall be paid for strike or lockout to all other member employees of the primary employer at all ter-

minals or places of employment of the primary employer involved if such member employees shall become unemployed as a direct result of the strike or lockout, provided the General Executive Board has approved the same at the time of approving the request for strike benefits. The General Secretary-Treasurer may in his discretion disburse strike benefit payments through a representative designated by him. The provisions of Article XII, Section 5 (a), shall not become effective until December 1, 1957.

(b). A Local Union or member more than one (1) month in arrears for per capita tax or dues shall not be entitled to strike benefits, and should a Local Union or member become three (3) months in arrears for per capita tax, dues, fines, etc., they shall stand suspended and shall not be entitled to benefits for three (3) months after all arrears have been paid.

(c). No member of a Local Union on strike shall be entitled to a weekly benefit unless he appears in person at headquarters, or other designated place, and reports daily to the proper officers of the Local Union or International Union while the strike continues, and no member who shall receive a week's work (three (3) days to be considered a week) shall receive benefits. Any member refusing to work for an employer considered fair, while on strike, shall be debarred from all benefits under this law.

Payrolls, Reports

Section 6. (a). The General Secretary-Treasurer shall, on or about the end of the second (2nd) week and each succeeding week of a strike or lockout, forward to the Local Union Secretary-Treasurer or deputy a check covering a sufficient amount to pay

each week's benefits, and he shall also furnish blank payroll sheets on which each member shall sign for the amount received, said payroll to be made in duplicate.

(b). The Local Union Secretary-Treasurer or deputy shall forward the original payroll to International Union Headquarters, but shall retain a carbon copy of the same for future reference, and the Executive Board of the Local Union that is on strike shall endorse the payroll.

(c). Failure to receive receipted payroll sheets in due time at the General Office will be sufficient cause for the discontinuance of benefits to any Local Union failing to comply with this law.

(d). During the continuance of a strike the deputy or strike committee of the Local Union shall make weekly reports to the General Secretary-Treasurer, showing the amount of moneys distributed for benefits, the number of beneficiaries and all other facts that may be required.

Termination of Strike

Section 7. The general President with the concurrent approval of three-fourths (¾) of the General Executive Board, and after having given the subordinate body the right to appear before the General Executive Board before action is taken, shall have the power to declare the same at an end so far as the financial aid of the International Union is concerned, when satisfied upon facts and information in their possession that the support of a strike or lockout should cease. The provisions of Article XII, Section 7, shall not become effective until December 1, 1957.

Return of Unused Strike Funds

Section 8. All moneys from the International Un-

ion remaining unused by the Local Union at the close of the strike or lockout shall be returned at once to the General Secretary-Treasurer.

Lockout

Section 9. Among other circumstances, a declaration on the part of an employer; or a combination of employers, to the effect that their employees must cease their connection with the International Union or cease work, shall be deemed a lockout. In case a lockout is reported to the International Union, the General President shall endeavor to obtain a satisfactory proof that the difficulty is a bona fide lockout. Also a lockout shall be deemed to exist when an employer refuses to permit his employees to continue at work, unless such employees agree to a substantial and material breach of an existing agreement or refuses to permit work with or without stated reasons or conditions. Lockout benefits, at the same rate as strike benefits, shall be paid under the same terms and conditions as strike benefits, excepting that neither strike votes nor prior notice to the International Union shall be required as condition of eligibility, and such lockout benefits shall be payable after the first week of such lockout. The provisions of Article XII, Section 9, shall not become effective until December 1, 1957.

Section 10. Nothing herein contained concerning the manner of calling strikes or concerning the legality of strikes for the purpose of obtaining the payment of International Union's strike benefits shall affect the legality of the strike in respect to the employer against whom the Local Union instituted such strike; nor shall any provision contained herein concerning strike recognition for payment of strike or lockout benefits be intended to constitute

the International Union a party to such strike or lockout.

Wage Scales and Approval Thereof

Section 11. (a). Proposed collective bargaining contracts or amendments thereto shall be submitted to the Joint Council and Area Conference if required by the Area Conference by-laws for approval before the submission to the employer. If no Joint Council exists it shall be submitted to the State or Area Conference for its approval. In those cases where the proposed contract is for operations which are already subject to an area-wide agreement or a prospective area-wide agreement is already planned, the proposed contract shall be submitted to the Area Conference for approval before submission to the employer. The provisions of Article XII, Section 11 (a), shall not become effective until December 1, 1957.

(b). True copies of final agreements arrived at by any subordinate body shall be filed with the Research Department of the International Union and of the Area Conference within sixty (60) days after consumation. The provisions of Article XII, Section 11 (b), shall not become effective until December 1, 1957.

(c). Approval or disapproval by the International Union, Area Conference or Joint Councils of wage scales or other agreements is not intended to impose any liability on such organizations or its officers; and such organization and its officers do not assume any liability of any nature to any person or persons for such approval or disapproval.

(d). In such instances where the General Executive Board receives information of the proposed execution of a contract which affects the interests

of either the members involved or any other members of the International Union by providing working conditions or earnings less than those prevailing in the area, it shall have the power to hold a hearing on such matters and may, by a majority vote, direct the subordinate body to refrain from executing such agreement, and in such circumstances no proposed agreement shall become valid and binding unless specifically approved by the General Executive Board.

The General Executive Board shall also have the power to take such disciplinary action as it deems necessary after proper notice according to this Constitution in those cases where it finds that a subordinate body or its representatives have without good cause executed agreements which adversely affect members of this International Union within the jurisdiction of the particular Joint Council. The provisions of Article XII, Section 11 (d), shall not become effective until December 1, 1957.

Disputes Over Jurisdiction

Section 12. Where two (2) or more Local Unions are in dispute concerning jurisdiction, there shall be no work stoppage of the involved operation, but such controversy shall be submitted for determination to the Joint Council. If any party to such dispute is aggrieved by the decision of the Joint Council, it may appeal to the General President for the appointment of a special committee which in his discretion he may appoint for the purpose of holding a hearing and making a report and recommendations on the issues raised. The committee shall make its report and recommendations to the General Executive Board for its decision, which shall be final and binding. The parties shall not be entitled to any

further hearing or appearances before the General Executive Board. Pending and as a condition to appeal and until such time as the General Executive Board makes its decision, any party taking an appeal under this Section shall comply with the determination of the Joint Council.

Any Local Union violating this provision and engaging in any strike or work stoppage or refusing to comply with the decisions so rendered in accordance with this provision, shall be subject to the appointment of a Trustee, revocation of charter, or such other penalty which the General Executive Board may propose.

Article XIII

ASSISTANCE TO LOCAL UNIONS

General Assistance to Local Unions

Section 1. No Local Union shall receive financial assistance from the International Brotherhood of Teamsters unless the Secretary-Treasurer of said Local Union has been bonded in accordance with the provisions of this Constitution.

Assistance From Sister Local Unions

Section 2. All Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, soliciting financial aid or other monetary consideration from sister Local Unions, must first receive official approval and endorsement from the General Executive Board.

Article XIV

CHARTER MEMBERS, DUES, MEETINGS OF LOCAL UNIONS

Charter Members

Section 1. (a). Charter members shall consist of the names forwarded to International Union Headquarters with the application for charter, and Local Unions must procure initiation stamps for all charter members, but charter members shall not be required to pay per capita tax for the month in which they receive their charter.

(b). Charter members shall receive a free copy of the Constitution and official due card from the International Union.

(c). A Local Union may, by majority vote, keep its charter open for a term of thirty (30) or sixty (60) days after receiving the same, but all members initiated must have their official due cards stamped as provided by Article X, Section 6 (a).

Dues and Meetings of Local Unions; Forfeiture of Financial Benefits for Failure to Hold Meetings

Section 2. (a). Dues of members of all Local Unions chartered by the International Union shall not be less than three dollars ($3.00) per month; provided that in the case of Local Unions chartered after the 1952 convention, unless otherwise approved by the General Executive Board, the dues of the members of such Local Unions shall be not less than two dollars ($2.00) for the first (1st) year following such chartering.

(b). All Local Unions must hold meetings at least once a month, except where otherwise approved by the General Executive Board. The General Execu-

tive Board shall establish such conditions relative to the holding of meetings as in its judgment it deems advisable. Provided, however, meetings may be suspended by action of the Local Union without such approval during any three (3) consecutive months in the period from June through October. The provisions of this subsection shall be satisfied if the monthly meetings provided herein are held, by division, craft or place of employment, as a result of Local Union action.

(c). Any Local Union failing to comply with this Section during the twelve (12) month period immediately preceding application for benefits or in the case of a Local Union chartered for less than twelve (12) months during the period following its chartering shall not be entitled to any financial or other benefits from the International Union, provided that the General Executive Board may, for good cause shown, waive the requirements of this Constitution in respect to the paying of financial or other benefits and authorize the paying of same. The General Executive Board may revoke the charter of any Local Union failing to comply with this section.

Article XV

JOINT COUNCILS

Formation of Joint Councils

Section 1. (a) Whenever three (3) or more Local Unions are located in one (1) city they shall form a Joint Council, but where there are only a few Local Unions in small cities or towns adjoining or adjacent to large cities, they shall affiliate with the Joint Council in the large cities.

(b). In localities composed of small cities and towns, the General Executive Board shall decide

when, where and by whom Joint Councils shall be formed. Should any dispute arise as to the jurisdiction of a Joint Council, it shall be decided by the General Executive Board.

(c). Whenever in the judgment of the General Executive Board the jurisdiction of a Joint Council should cover a wider area, the General Executive Board may so order.

Representation

Section 2. (a). Each Local Union shall be entitled to seven (7) delegates, excluding its Business Representative.

(b). The seven (7) executive officers of each Local Union shall constitute the delegates to the Joint Council. The Business Representative shall be entitled to the floor, but cannot introduce a motion or vote.

Dues

Section 3. Local Unions shall pay monthly dues, proportionate to their numerical strength, sufficient to maintain the organization.

Judicial Powers

Section 4. (a). Joint Councils shall have full power to adjust all questions of jurisdiction between Local Unions, subject to the provisions of Article XII, Section 12, to try cases against Local Unions, cases appealed from Local Unions, and to try individual cases which Local Unions refuse or neglect to try in accordance with the trial procedure provided for in Article XVIII.

(b). Should any member violate his obligation by refusing to employ union men, or to patronize and assist members of the International Union,

the member who may have been aggrieved shall present his case in writing to the Joint Council and if there is no Joint Council then to the General Executive Board and they shall hear and decide the case and report their decision back to each affiliated Local Union.

(c). In order to facilitate the work of the General Executive Board, the General President is empowered to appoint a grievance committee of three (3) members to hear appeals and to refer to it appeals taken to the General Executive Board. The grievance committee shall meet at the time and place designated by the General President. This committee shall afford the parties to the appeal the same character of hearing as would be given the parties by the General Executive Board and the same procedure shall apply as is provided for appeals to the General Executive Board. When the hearing is concluded before the committee, it shall make its report and recommendations to the General Executive Board for disposition of the appeal: The decision in the case shall be made by the General Executive Board. The parties to the appeal shall not be entitled to further hearing or further personal appearance before the General Executive Board.

By-Laws for Joint Council

Section 5. A Joint Council may make such by-laws as it deems proper, provided it does not conflict with the laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Such by-laws and amendments thereto shall be submitted to the General President for approval and shall have no force nor effect until approved by the General President; regardless of approval, if any conflict should arise between such by-laws or amendments thereto and the Interna-

tional Constitution or amendments thereto, the provisions of the International Constitution shall control. If the General President's office fails to approve the by-laws the matter may be referred by the Joint Council to the General Executive Board.

Affiliation of Local Unions

Section 6. All Local Unions within the jurisdiction of the Joint Council shall affiliate with the Joint Council, comply with its laws and obey its orders.

Conferences

Section 7. (a). Experience has demonstrated that Conferences are necessary to this International Union and its affiliates and are organic bodies within this International Union. Therefore, Conferences shall be organized on such geographical areas or trade divisions as the General Executive Board may direct. They shall be at all times subject to the supervision and control of the International Union and they shall function under rules laid down by and by-laws approved by the General Executive Board. The International Constitution shall supersede Conference by-laws in the event of conflict.

(b). All Local Unions must affiliate with and participate in the activities of the Area Conference and State Conference, if any, having geographic jurisdiction over such Local Union.

Where a majority of Local Unions in a state petition the General Executive Board for a State Conference charter and the charter is granted, thereafter it shall be compulsory upon all Local Unions in that state to be affiliated with that Conference.

The function of State Conferences shall be set forth in their by-laws which must be approved by the General Executive Board.

(1). The Chairmen of the Area Conferences shall be appointed by the General President. Executive Boards of the Area Conferences shall be elected by the delegates to such Conferences. Upon his appointment the Chairman shall become an employee of the International Union subject to the supervision of the General President and General Executive Board and his salary shall be fixed by the General Executive Board.

Chairmen of the Area Conference Trade Divisions may be appointed by the Area Conference Chairman subject to the approval of the Conference Executive Board. Area Conference by-laws shall govern the method of selecting or electing chairmen of the Area Conference Trade Divisions.

(c). Upon completion of negotiations by an Area or Trade Conference of an industry or area contract such contract shall be submitted to the membership covered by said contract proposal for their approval or rejection.

If a majority of the votes cast by Local Union members covered by such contract approve such contract it shall become binding and effective upon all Local Unions involved and their members. Provided, however, no Local Union shall suffer any loss of a working condition better than that in the contract and provided further that no Local Union shall suffer any economic loss unless mutually agreeable.

(d). In the event any Conference negotiates a contract which involves, affects or relates to operations of the employer or employers within the jurisdiction of other Conferences, notice of intent to execute such contract shall be given to the Conference or Local Unions involved in such other jurisdiction who may within ten (10) days thereafter, protest the application of such contract in their area. Failure to file such protest shall be consid-

ered a waiver of any objections to such contract, but shall not be considered an acceptance of such contract as a substitute for, or in variance of, existing agreements to which the other Conferences or Local Unions are parties.

In the event of protest, and if the parties cannot adjust the same, the matter shall be submitted to the General Executive Board for its determination, and no such contract shall become finally effective until the determination by the General Executive Board.

No provision of subsections (c) and (d) shall change existing, established collective bargaining patterns unless agreed to by all the Local Unions in the bargaining unit affected or unless Area Conference by-laws provide otherwise.

All employers negotiating contracts with Area Conferences, or with subordinate bodies, shall be provided with a copy of this Article at the time negotiations are started so they will have notice of the approval necessary for a binding contract. The provisions of Article XV, Section 7, shall not become effective until December 1, 1957.

Article XVI

CHARTERED MISCELLANEOUS LOCAL UNIONS

Section 1. (a). Whenever there is not a sufficient number of any one (1) craft, a mixed Local Union may be formed. There shall be only one (1) Local Union of any craft chartered in any city, except in localities where it may be necessary, and in such cases the General Executive Board shall, after consultation with the Joint Council, have full power to determine the advisability of issuing a separate charter.

(b). Where there is a mixed Local Union any separate and distinct division of such Local Union

consisting of one thousand (1,000) or more members, a majority thereof may petition the Local Union for a separate charter. A lesser number shall have the same right, provided they are numerically and financially able to function properly. If the Local Union fails to act upon such petition within reasonable time then the application may be submitted to the Joint Council Executive Broad which shall consider the matter and make such recommendations as they deem for the best interest of the organization. Their recommendations shall be subject to approval of the Joint Council. In the consideration of such application the Joint Council shall notify the Local Union of the application for such separate charter, in order to afford it an opportunity to present its position. Where a Local Union or applicant disagrees with the Joint Council decision they may appeal to the General Executive Board whose decision after the hearing shall be final. When a separate charter is issued to a separate group as herein provided, the jurisdiction of the newly chartered Local Union must be transferred to said new Local Union. It shall be incumbent upon the mixed Local Union to provide the necessary funds with which the newly constituted Local Union shall obtain its charter, with a minimum equivalent to a one (1) month's dues per member for the number being transferred. The new Local Union shall be under the supervision of the International Union for a period of no more than two (2) years unless otherwise ordered by the General Executive Board.

Article XVII

TRANSFER AND WITHDRAWAL CARDS

Duty To Accept Transfer Card

Section 1. It shall be compulsory upon every Local Union to accept the transfer card of a member in

good standing with any Local Union of the International Union, without any extra charge or fees, except as provided in the International Constitution provided, however, the member seeking to transfer shall comply with all rules and regulations set forth in this Constitution respecting transfer; and provided further he shall comply with rules and regulations of the Local Union and its constitution and by-laws. Such Local Union shall accord him opportunity for employment and all other rights and privileges in accordance with the rules and regulations of the Local Union to which he seeks to transfer.

Transfer Card
Date of Initiation

Section 2. This is to certify that the bearer hereof, Brother ....., whose name is written on the margin of this card in his own handwriting, is a member in good standing of Local Union No. ....., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and is entitled to all rights and privileges under our jurisdiction.

We recommend him to the friendship and protection of all members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, wherever he may be, and to free admission, provided he has been a member not less than ninety (90) days in the Local Union from which he transfers, otherwise he shall pay the difference in the initiation fee to the Local Union to which he transfers.

This card expires ....., 19....., and is null and void after that date, unless renewed or deposited in accordance with the Constitution.

The member receiving this card will be suspended from all rights and benefits unless the card is re-

newed by the Local Union before its expiration. It will also be forfeited unless deposited within thirty (30) days after going to work in any town or city where there is a Local Union.

This card is issued in accordance with provisions of Article XVII, Section 1, and Article XVII, Section 3, of the International Constitution.

Given under our hands and the seal of Local Union No. ....., this ..... day of ....., 19.....

(SEAL)

Deposit of Transfer Card

Section 3. (a). It shall be compulsory for a member working under the jurisdiction of another Local Union to procure a transfer card from the Local Union of which he is a member, and to deposit the same with the Local Union under whose jurisdiction he is working. Immediately upon going to work or before if practicable, he shall make a request in writing of the Local Union of which he is a member and from which he seeks to transfer for the issuance of a transfer card to him, and shall also apply to the secretary-treasurer of the Local Union into which he is seeking to transfer for approval of that secretary-treasurer so to transfer. No transfer card shall be issued unless such approval has been obtained in writing attested to by such secretary-treasurer. Within forty-eight (48) hours after a member has received a transfer card and he shall deposit the same with the Local Union to which he seeks to transfer, and upon such deposit the transfer shall become effective. Upon transfer the member is subject to the rules, by-laws and agreements of the Local Union to which he has transferred. The Local Union from which a member has transferred shall be obliged to refund to such member dues paid in advance to such Local

Union covering the peroid from the end of the month in which such member has transferred to the end of the period for which such dues have been paid in advance. If a member continues to work under the jurisdiction of another Local Union after having been refused a transfer card or after having failed to apply for such transfer card as specified herein, or after the Joint Council has decided he should transfer, and he has refused, he thereby forfeits his membership, and his Local Union must not accept any more dues or furnish him with a button. Refusal to issue a transfer card or to approve a transfer may be appealed to the General President and thereafter to the General Executive Board in accordance with the appeal procedures provided for in this Constitution, excluding, however, appeal to the convention.

(b). When seeking tranfer, such member shall present to the Local Union into which transfer is sought proper and satisfactory identification and also produce an official due card stamped up to date. A maximum charge of twenty-five cents (25c) may be made for such transfer card. Salaried officers of the International Union shall not be required to transfer from their respective Local Unions while employed by the International Union.

Jurisdiction to Issue Honorable Withdrawal Card

Section 4. Local Unions shall have jurisdiction over the granting of all honorable withdrawal cards. Refusal to grant honorable withdrawal card shall be subject to appeal in accordance with the appeal procedure provided for by this Constitution, excluding, however, any appeal to the convention.

There may be a maximum charge of twenty-five cents (25 cents) to any member granted a withdrawal card, and it shall be the duty of the secretary-treasurer of the Local Union receiving such charge to duly record the payment thereof in his cash book and carry it to his ledger.

The following provisions shall govern withdrawal cards and shall be embodied in the withdrawal card in the form prescribed by Section 5 hereof.

Honorable Withdrawal Card

Section 5. (a). This is to certify that the bearer hereof, Brother ....., whose name appears on the margin of this card in his own handwriting, has paid all dues and demands and withdrawn in good standing from membership in Local Union No. .....

(b). This card entitles him to readmission to the Local Union from which this card was issued at any time, subject, however, to the provisions of subsection (e) of this section.

(c). Any member of the International Union leaving our employment or going to work at another craft or occupation, must be given an honorable withdrawal card and cannot remain a member of the International Union; but before a withdrawal card is issued the individual must comply with all rules and laws of the Local Union and International Union.

(d). Any ex-member out on a withdrawal card and desiring to return to membership, must first deposit his withdrawal card with the Local Union by which it was issued; and upon the withdrawal card being accepted, the member shall be subject to the rules and laws of the Local Union. Refusal of any Local Union to accept a withdrawal card shall be subject to appeal in accordance with appeal pro-

cedure provided for by this Constitution, excluding, however, any appeal to the convention.

(e). Local Unions must not accept withdrawal cards if the member has committed any offense while out on withdrawal card which would be injurious to union principles. Also, if the Local Union is paying benefits and the member has fallen into bad health or is liable to become a charge against the Local Union or International Union, acceptance of the withdrawal card can be refused by the Local Union. Likewise acceptance of withdrawal card may be refused where adverse employment conditions exist.

Given under our hands and seal of Local Union No. ....., this ..... day of ..... 19.....

(SEAL)

....., Secretary.

....., President.

Article XVIII

TRIALS AND APPEALS

Trials of Local Union Officers and Members—Procedure

Section 1. (a). A member or officer of a Local Union charged by any other member of the Local Union with any offense contituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Union Executive Board. If the member charged or preferring the charges is a member of such Board then the president of the Local Union shall appoint a disinterested member as a substitute. If the president of the Local Union is charged or is preferring the charges

the Local Union secretary-treasurer shall appoint the substitute.

(b). Whenever the charges are preferred against any member or officer of a Local Union, the charges shall be filed in writing in duplicate with the secretary of the Local Union, Joint Council or General Executive Board which is to try the case. No member or officer of a Local Union shall be tried unless he or she shall be served by the secretary, personally or by registered or certified mail, with a written copy of such charges specifying the nature of the offense of which he or she is accused. Thereupon, the accused shall be required to stand trial at the time and place designated, which shall not be less than ten (10) days from the date the charges are served upon the accused. The accused may appear in person, and with witnesses, to answer the charges preferred against him or her. He may select only a member of his Local Union to represent him in the presentation of his defense.

(c). If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused restored to full rights of membership or office in the Local Union.

(d). Upon filing of such charges, and if the same are of such magnitude and seriousness as to jeopardize the interests of the Local Union or International Union, then, and in that event, the General President, if the matter is brought to his attention, may, if he deems it advisable, immediately suspend such member or officer from membership or office in the Local Union until a decision has been rendered in the case.

Appeals of Local Union Officers and Members

Section 2. (a). In the event disciplinary action is taken against the accused, he or she may take an appeal from the decision of the Local Union Executive Board to the Executive Board of the Joint Council, if one exists, otherwise the appeal shall be taken to the General Executive Board. Appeals from decisions of the Executive Board of Joint Councils may be taken to the General Executive Board. In all matters involving officers of subordinate bodies and individual members there shall be no further appeal from the decision of the General Executive Board. Where elective officers of the International Union are involved, and as to all other matters not specifically excluded herein, appeals from decisions of the General Executive Board may be taken to the next convention. All manner of appeals shall be taken within fifteen (15) days from the date the decision is placed in the mail or otherwise transmitted to the interested parties.

(b). The appellant shall mail a written notice of such appeal to the secretary of the body to which the appeal is directed. No specific form or formality shall be required, except that such notice shall clearly state an appeal is being taken from the particular decision rendered in the particular case. Pending any appeal, the decision appealed from shall remain in full force and effect. Appeals shall be heard either on the record made before the trial tribunal or by a re-trial, in the discretion of the body hearing the appeal. Decisions on appeals shall be rendered as promptly as possible after the appeal has been heard. The date when an appeal will be considered by the appellate body may be fixed by it, but it shall proceed without unnecessary delay. Notice of the date when the appeal will be heard shall be served personally or by registered or certi-

fied mail on the parties interested in the particular case, and such parties may, in the discretion of the appellate body, be accorded the right to appear before the appellate body and present argument on the case.

(c). If a member of the Executive Board of the Joint Council or of the General Executive Board is interested in the case as a party thereto, then the President of the Joint Council or the General President of the International Union, as the case may be, shall appoint a substitute.

(d). Failure of any interested party in any case to appear before any trial or appellate body at the time and place designated in the notice shall constitute a waiver of appearance and the trial shall proceed or the appeal heard regardless of the absence of such party.

(e). Any party to a case, regardless of whether such party is the accused or not, being aggrieved of a decision rendered in the case shall be entitled to the same rights of appeal as are hereinbefore provided for accused.

Trials and Appeals of Local Unions, Other Subordinate Bodies, and Elective International Union Officers

Section 3. (a). Whenever charges are preferred against a Local Union or against a Joint Council, or other subordinate body, such charges shall be filed in writing in duplicate with the secretary of the trial body, and shall be served personally or by registered or certified mail on the Secretary-Treasurer of the Local Union or the Joint Council or other subordinate body so charged. If the charges are against the Local Union the trial shall be by the Executive Board of the Joint Council, provided that if a Local Union is not affiliated with a Joint

Council due to the fact that no Joint Council exists with which such Local Union can affiliate, the trial shall be by the General Executive Board. If the charges are against a Joint Council or other subordinate body the trial shall be before the General Executive Board. The provisions of this section shall also be applicable when the Executive Board of the subordinate body is charged or is the charging party.

(b). A Local Union shall be accorded thirty (30) days' time in which to appear for trial and submit its defense. In the case of a Joint Council or other subordinate body the time of trial shall be fixed by the General Executive Board.

(c). In the matter of appeals from decisions affecting Local Unions not including decisions involving officers or individuals, the same shall be taken to the General Executive Board, and from it to the convention. In the matter of appeals from decisions affecting Joint Councils, or other subordinate bodies, not including decisions involving officers or members thereof, the same shall be taken to the convention. In all other respects procedure on appeals shall be the same as provided for in Section 2, this Article.

(d). Trial of elective International Union Officers shall be before the General Executive Board at such time and place as fixed by the General Executive Board. The officer charged shall be found guilty only on a majority vote of the entire General Executive Board. Appeals by such general officers from decisions of the General Executive Board shall be to the convention.

(e). Emergency powers provided for in Section 9, this Article, shall apply with the same force and effect to Local Unions and Joint Councils and other subordinate bodies.

Original Jurisdiction of General Executive Board To Try Offenses Against International Union

Section 4. (a). Notwithstanding any other provision of this Constitution, the General Executive Board shall have jurisdiction to try individual members, officers, Local Unions, Joint Councils or other subordinate bodies for all offenses committed against the officers of the International Organization or the International Organization. In the event charges have been filed or hearings are pending before a subordinate body in respect to any offense over which the General Executive Board has assumed jurisdiction under this section, the jurisdiction of such subordinate body shall forthwith terminate and the subordinate body shall, upon request of the General Executive Board, transfer all of its records and papers pertaining to the case to the General Executive Board.

(b). Charges shall be filed in duplicate in writing with the General Secretary-Treasurer or the General President. A copy of the charges shall be served personally or by registered or certified mail upon the accused, together with notice of the time and place of trial.

(c). If the accused are unable to be present at the meeting of the General Executive Board, they may present their case in writing.

Trials Before Panels of Executive Boards

Section 5. In any case where a trial before the General Executive Board of the International Union or the Executive Board of any subordinate body thereof is required under the provisions of this Constitution, such Board may have such trial conducted before a panel appointed by the General President or the president of the subordinate body as the case

may be, consisting of one (1) or more disinterested members thereof. This panel shall act on behalf of such Board in the holding of hearings and the taking of evidence and, following the conclusion of the hearing before it, shall make a full report in writing, including findings and such recommendations for disciplinary action, if any, the Board itself is to take. The ultimate determination of the case, however, shall be made by the Board itself on the basis of the record made before the panel.

Grounds for Charges Against Members, Local Unions, Joint Councils and Officers

Section 6. The basis for charges against members, officers, Local Unions, Joint Councils or other subordinate bodies, for which he or it shall stand trial, shall consist of but not be limited to the following:

(1) Violation of any specific provision of the Constitution or failure to perform any of the duties specified thereunder.
(2) Violation of the oath of loyalty to the Local Union and the International Union.
(3) Violation of the oath of office.
(4) Gross disloyalty, or conduct unbecoming a member.
(5) If an officer, gross inefficiency which shall hinder and impair the interests of the Local Union or of the International Union.
(6) Misappropriation.
(7) Secession, or fostering the same.
(8) Abuse of fellow members and officers by written or oral communication.
(9) Abuse of fellow members or officers in the meeting hall.
(10) Activities which tend to bring the Local Union or the International Union into disrepute.

(11) Disobedience to the regulations, rules, mandates and decrees of the Local Union or of the officers of the International Union.

(12) Such other acts and conduct which shall be considered inconsistent with the duties, obligations and fealty to a member of a trade union, and for violation of sound trade union principles.

Specific Offenses

Section 7. Any member who (1) knowingly goes to work or remains in the employment of any person, firm or corporation, whose men are on strike or locked out, unless he has permission of the International Union, the Joint Council or his Local Union, may be tried by the Executive Board of his Local Union, or (2) knowingly gives or attempts to give directly or indirectly, any information to any employer on an unfair list or whose men are on strike or locked out, or whose men are trying to secure an agreement or an improvement in their working conditions or whose men are trying to prevent an increase in hours of labor or a decrease in wages, for the purpose of assisting such employer, or for any gain or promise of gain, or (3) knowingly goes to work or remains in the employment of any person, firm or corporation on an unfair list of the International Union, without permission from the International Union, the Joint Council or his Local Union, may be tried in the manner provided for the trial of other offenses.

Refusal To Return Books

Section 8. Any member who (1) wrongfully takes or retains any money, books, papers or any other property belonging to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Help-

ers of America, any Joint Council, Local Union, or other subordinate body; or (2) who mutilates, erases, destroys or in any way injures any books, bills, receipts, vouchers, or other property of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, any Joint Council, Local Union or other subordinate body, may be tried in the manner provided for the trial of other offenses.

Decisions and Penalties

Section 9. (a). Decisions and penalties imposed upon individual members, officers, Local Unions, Joint Councils or other subordinate bodies found guilty of charges may consist of reprimands, fines, suspensions, expulsions, revocations, denial to hold any office permanently or for a fixed period or commands to do or perform, or refrain from doing or performing, specified acts. If the penalty is by way of fine then the same must be paid, pending an appeal if one is taken unless the General President waives the same within ten (10) days from receipt of request therefor. A Local Union ordered to reinstate a member or perform an act other than the payment of a fine must comply therewith as a condition precedent to taking an appeal unless the General President or the General Executive Board suspends such order pending the appeal. If the fine is against a member or officer of a Local Union, assessed by the Local Union, it shall be paid into the treasury of the Local Union. If a fine is assessed against a Local Union by a Joint Council the payment shall be to the treasury of the Joint Council.

(b). If the fine is assessed where the General Executive Board has assumed original jurisdiction, it shall be paid to the Treasury of the International Union.

(c). When such penalty consists only of a fine and an appeal is taken, such fine shall be deposited as above provided; thereupon such member, officer or Local Union shall be permitted to continue in the Local Union with full rights and privileges in accordance with the laws of the International Union. If on appeal the decision is reversed and the fine disallowed, then the same shall be returned to the party depositing the same. Whenever a decision is handed down by any trial or appellate body and an appeal is taken, such decision shall stand and remain in full force and effect until reversed by a higher body.

(d). In the event of non-compliance with the decision handed down by a trial or appellate body, the member, officer, Local Union, or Joint Council shall stand suspended from all privileges of the International Union until the provisions of the decision have been complied with. If, however, the decision carries with it an order of expulsion, then such order of expulsion shall immediately take effect.

(e). Any member or Local Union that is tried by the General Executive Board cannot be tried for the same offense by a Local Union or Joint Council.

(f). The General Executive Board may send a case back to the Joint Council, the Local Union, or other hearing body or officer for further hearing, production of additional testimony, or for further consideration with or without such further hearing.

Emergency Power in General President To Conduct a Trial When Welfare of Organization Demands

Section 10. (a). Whenever charges involving a member or members, officer or officers, Local Union, Joint Council or other subordinate body create, involve or relate to a situation imminently dangerous

to the welfare of a Local Union, Joint Council, other subordinate body or the International Union the General President is empowered, in his discretion, in all cases except where the General Executive Board has assumed jurisdiction under Section 4 of this article, to assume original jurisdiction in such matter, regardless of the fact that charges have been filed with a subordinate body and are pending. When the General President has assumed such original jurisdiction under this section, the jurisdiction of the subordinate body shall cease. Under such circumstances, the General President shall hold a hearing upon giving not less than forty-eight (48) hours notice to the party or parties charged to appear before him at a place and time designated by him. He shall then proceed to hear and try the matter and render judgment in accordance with the facts and circumstances presented to him. When the General President has so acted, an appeal shall lie from his decision to the General Executive Board, and from the General Executive Board to the convention in the same manner and to the same extent only as is provided for appeals in other cases. Pending appeal from the General President's action, his decision shall stand and be enforced.

(b). When the General President deems it necessary to exercise the foregoing emergency power, he may deputize a representative or representatives to act for him in such matter. Such representative shall have the same powers as the General President as herein provided; however, when a trial shall be conducted by a representative or representatives of the General President, such representative or representatives shall make his or their recommendations to the General President, orally or in writing, and the decision in the case shall be made by the General President himself.

Charges Not Preferred in Good Faith

Section 11. If charges are preferred and such charges are not sustained and the trial body or appellate body is convinced that the same were not brought in good faith or were actuated by malice, the trial body or the appellate body may impose such penalty by the way of punishment as in its judgment is deemed proper under the circumstances.

Refusal of Local Union to Try Member

Section 12. Any Local Union refusing to try its members when charges have been preferred by another Local Union, for any cause whatsoever, the Local Union preferring the charges may then bring the charge before the Executive Board of the Joint Council, where one exists for trial and decision in the same manner as provided for the conduct of other trials before the Local Union Executive Board. If no Joint Council exists, then the matter shall come within the jurisdiction of the General Executive Board.

Revocation of Membership on Being Found Guilty of Crime

Section 13. (a). When a member is convicted of the commission of a crime or serious wrongdoing, or pleads guilty to the commission of a crime or serious wrongdoing, against the Local Union or against the community, and which crime or act of serious wrongdoing tends to bring dishonor upon the Local Union or the International Union, it shall be the duty of the Local Union to proceed to revoke the membership of such member. Likewise, whenever a member of a Local Union has engaged in what is commonly termed racketeering, and he is found guilty thereof, thereby bringing dishonor upon the Local Union or upon the International Union, it shall be

the duty of the Local Union to proceed in the manner provided in Article XVIII, Section 1, to revoke the membership of such member.

(b). Under the circumstances referred to in the foregoing paragraph, the Secretary-Treasurer of the Local Union shall refuse to accept dues from any person so removed from membership. It shall be mandatory upon the Local Union Executive Board to order the name of such member stricken from the rolls and to notify all Local Unions in the district, the Joint Council and the International Union, of its action and the cause therefor.

(c). In the event a Local Union fails to carry out the foregoing provision, then the General President, when the matter is brought to his attention, shall have the power, in his discretion, to proceed to revoke or order the revocation of the membership of such member.

(d). Any individual whose membership is hereafter revoked in accordance with the provisions of this section may subsequently be reinstated to membership; such reinstatement shall be subject to the approval of the Local Union of which he was a member, the involved Joint Council, and the General Executive Board.

Exhaustion of Remedies

Section 14. (a). Every member, officer, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any other court or tribunal.

(b). Where a member, officer, Local Union, Joint

Council, or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union shall be assessed against such individual, Local Union, Joint Council, or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.

Where such court action is by an individual or by a Local Union, Joint Council, or other subordinate body against a Local Union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the Local Union, Joint Council or other subordinate body proceeded against in court.

Section 15. All decisions following trials or hearings shall be made and rendered within sixty (60) days of the date of the hearing of trial commenced, unless otherwise ordered by the General Executive Board.

Article XIX

DISSOLUTION

No local union can dissolve, secede or disaffiliate while there are seven (7) dissenting members; no Joint Council can dissolve, secede or disaffiliate while there are two (2) dissenting Local Unions; nor can this International Union dissolve while there are seven (7) dissenting Local Unions. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such Local Union or Joint Council or other subordinate body shall become the property of the International Union as specified in Sections 14 and 15 of Article X hereof. Under no circumstances shall any Local Union or Joint Council distribute its funds, assets

or properties individually among its membership. To ascertain whether or not seven (7) members desire to retain the charter, there shall be subtracted from the complete membership list for the current month the name of each member in good standing who has, during the current month, submitted to the General Secretary-Treasurer a personally signed notarized, individual affidavit attesting to his desire to severe his membership in the Local Union and International Union. Such affidavit shall be forwarded to the General Secretary-Treasurer in the month in which it is signed. It shall be conclusively presumed that all who have not executed such individual affidavits still desire to retain the charter.

Article XX

LABOR DAY

We recognize the first Monday in September as Labor Day, except in states where another day is provided by law, and call upon all Local Unions to observe the same. It is advisable for Local Unions to unite and march under one banner in cities where there is more than one (1) Local Union and each Local Union can make such rules and regulations requiring their members to observe the day, as best adapted to their locality.

Article XXI

LOCAL UNIONS

Section 1. Each Local Union shall have the right to make such by-laws as it may deem advisable, providing they do not conflict with the laws of the International Union. Where the General President fails to approve the by-laws the Local Union may refer the matter to the General Executive Board.

Section 2. The officers of the Local Union shall consist of a President, Vice-President, Recording

Secretary, Secretary-Treasurer and three (3) Trustees. These officers shall constitute the Executive Board of the Organization.

Section 3. Election of officers of Local Unions shall not exceed the period for which International Union Officers are elected and shall not be for a lesser period than three (3) years. In the instance of Local Unions that have not been chartered two (2) years at the time of the adoption of this provision and in the case of new Local Unions, hereafter chartered, until such Local Unions have been chartered for two (2) years, officers shall not be elected for a period longer than one (1) year. No member while receiving severance or retirement benefits from the International Union shall be eligible to hold a salaried office or position in a Local Union; provided that International Union Vice-Presidents and International Union Trustees who are receiving severance or retirement benefits based solely on their services as such officers may hold a salaried office in a Local Union. Provided further that if the member receiving severance or retirement defers the receipt of such benefits he shall be eligible to hold salaried office or position with a subordinate body during the period of such deferment.

Section 4. The Conductor and Warden shall be appointed by the Chair. All officers shall serve for the period of their election unless removed by the Trustee (see Article VI, Section 5 (b)) for incompetency, or neglect of duty, dishonesty or other violation of this Constitution.

Section 5. Nomination of officers shall take place in November or December. The election shall follow at the next meeting, provided, however, that if it is so voted by the membership at a regular or special meeting held for such purpose prior to the election meeting, the election may be held at such other place

or places and at such other time not later than one (1) month after the nomination meeting as may be designated by the Local Union Executive Board, in which case the election shall be by secret ballot to be placed in boxes (unless the Executive Board of the Local Union has authorized the use of some standard type of election mechanical device insuring a secret ballot by machine vote), the election box or machine however to be located at a place or places designated by the Local Union Executive Board for the convenience of the membership; balloting shall be open to suit the convenience of membership and for a period not less than six (6) hours between the hours of 8:00 a. m. and 8:00 p. m., and it shall be the duty of the Local Union Executive Board to provide safeguards for the honest and fair conduct of such election, including grant of the right to each nominee in such election of at least one (1) observer at all times. The officers-elect may be installed at the same meeting at which they are elected or, if not elected at a meeting, at the next meeting following their election. Where the nominee is unopposed at the regularly designated nomination meeting, there shall be no necessity for the election of such nominee and he shall be declared duly elected at such nomination meeting, effective as of the conclusion of the term of the previous incumbent. The General President is authorized to change the time and place of nomination and election provided for in this section.

Section 6. The regular nominations and elections in Local Unions, having a substantial number of seasonal workers in their membership, shall be held at such dates and times as the General President shall designate in the year provided for in the Local Union by-laws, and in conformance with all other

provisions in the International Constitution pertaining to nominations and elections.

Section 7. The Business Representative and assistants of a Local Union may be elected or appointed in the manner provided by the Local Union by-laws, the same as any other officer; but can be removed at any time for incompetency, neglect of duty, or dishonesty or other violations of this Constitution, or if there are not sufficient funds in the Local Union to pay his salary. Unless otherwise provided in this Constitution, elected Business Representatives and assistants of Local Unions are entitled to trial before removal; those not elected, but merely appointed or hired, are not entitled to such trial before removal.

Article XXII

DUTIES OF LOCAL SECRETARY-TREASURERS

Section 1. Local Union Secretary-Treasurers, immediately upon taking the Office of Secretary-Treasurer, shall procure a suitable surety bond or suitable collateral, and a copy of the same must be filed in the General Office.

Section 2. Local Union Secretary-Treasurers shall deposit all moneys in the Local Unions in a reliable bank in the name of the Local Union at least twice a month or oftener, if possible, as the Local Union may designate from time to time.

Section 3. Local Union Secretary-Treasurers must pay all bills by check, signed by any two (2) of the following: the Local Union President, the Local Union Secretary-Treasurer, one (1) elected Business Representative. In the event that two (2) or all of these officials become ill or otherwise incapacitated the Local Union Executive Board shall designate

substitutes for the purpose of signing such checks.

Section 4. Local Union Secretary-Treasurers must balance their day book and cash books monthly, showing the exact balance on hand with the Local Union on the first (1st) day of the coming month, and have their bank book balanced on the last day of the month or get a bank statement from the bank on the last day of the month, showing the exact amount of money in the bank, so that the Trustees of the organization may verify the bank statement and the books of the Local Union at any time.

Section 5. Local Union Secretary-Treasurers must keep the International Union bookkeeping system, consisting of a day book, ledger records and cash book, or any other mechanical system approved by the General Secretary-Treasurer, and must issue dues books.

Section 6. Local Union Secretary-Treasurers must keep the applications of all new members initiated filed monthly.

Section 7. Local Union Secretary-Treasurers must keep all of the part paid applications on hand properly filed.

Section 8. Local Union Secretary-Treasurers must keep all receipted bills filed monthly.

Section 9. Local Union Secretary-Treasurers must attach all return checks to the stub in the check book of the Local Union each month when he receives his cancelled checks from the bank or adopt other procedures approved by the General Secretary-Treasurer.

Section 10. Local Union Secretary-Treasurers shall report to the General Secretary-Treasurer by the tenth (10th) day of each month, the number of men that are being carried on the books of the Local Union as good standing members as of the

first (1st) day of that month, and all new members who have been initiated during the previous month and all members who have paid up their back dues and again become in good standing. This report must be made on the monthly report blank that is issued by the General Secretary-Treasurer.

Section 11. Local Union Secretary-Treasurers must pay to the General Secretary-Treasurer forty cents (40c) out of every due collected by the Local Union.

Section 12. Local Union Secretary-Treasurers must report the names and addresses of all new members coming into the Local Union to the General Office.

Section 13. Local Union Secretary-Treasurers shall send to the General Secretary-Treasurer a revised list quarterly of the names and addresses of all members in good standing in the Local Union.

Section 14. Local Union Secretary-Treasurers cannot and must not carry any men on their books as members of the organization and mark them exempt from paying dues.

Section 15. Local Union Secretary-Treasurers on the monthly audit of the Trustees must see that the Trustees sign their books, if the Trustees of the Local Union have found them correct and the bank balance verified with the balance on the books of the Local Union.

Section 16. Local Union Secretary-Treasurers must see that the Chairman of the Trustees forwards a copy of the monthly audit, properly signed by the Trustees, showing the balance on hand with the Local Union to the General Secretary-Treasurer.

Section 17. When the term of office of a Local Union Secretary-Treasurer expires and his successor is elected to take his place, he must see that his

successor is properly bonded and a copy of the bond sent to the General Office before he transfers the funds of the organization to his successor in office.

Article XXIII

RULES OF ORDER FOR LOCAL UNIONS

Section 1. The President, while presiding, shall state every question coming before the Local Union before suffering debate thereon, and immediately before putting it to a vote he shall ask: "Is the Local Union ready for the question?" Should no member rise to speak and the Local Union indicates its readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

Section 2. When the decision of the President is appealed from, he shall state his decision and the reasons therefor, from the Chair. The party appealing shall then briefly state the reasons for the appeal, after which, without further debate, the question shall be put thus: "Shall the decision of the Chair stand as the judgment of this Local Union?"

Section 3. Every member, while speaking, shall adhere to the question under debate, avoid all personality and indecorous language, as well as any reflection on the Local Union or any member thereof.

Section 4. Any member, while speaking, being called to order by another, at the request of the Chair, shall cease speaking and be seated until the question of order is determined.

Section 5. No member shall speak more than once on the same question until all the members wishing to speak have had an opportunity to do so; nor more than twice without the permission of the Chair, nor more than ten (10) minutes at one (1) time.

Section 6. All resolutions and motions, other than the first six, in Rule 8, to accept or adopt the report of the committee, shall be reduced to writing before the President shall state the same to the Local Union.

Section 7. Any member may call for the division of a question when the sense will admit of it.

Section 8. The following motions shall have precedence in the following order herein arranged: First, to adjourn; second, to close debate; third, to take the previous question; fourth, to lie on the table; fifth, to postpone indefinitely; sixth, to postpone to a definite time; seventh, to refer; eighth, to amend. The first four shall be decided without debate.

Section 9. The motion to close debate may be made by two (2) members, and shall be put in this form: "Shall the debate now close?" And, if adopted, the President shall proceed to take the question on the resolutions and amendments thereto, according to priority, without further debate.

Section 10. The call for the previous question may be made by six (6) members and shall be put in this form: "Shall the main question be now put?" If adopted, the effect shall be to take the question on the original resolution to the exclusion of all debate and all amendments which have not been adopted.

Section 11. All votes other than amendments to the Constitution, By-Laws or Rules of Order may be considered at the same or next succeeding meeting upon a motion made and seconded by two (2) members who voted in the majority; provided the Local Union agrees thereto; but after a motion to reconsider has once been lost, it shall not be renewed.

Section 12. Every member present shall vote on all questions before the Local Union unless personally interested. A motion to excuse a member from voting shall be put without debate.

Section 13. No member shall enter or leave the Local Union meeting during the reading of the minutes, admission of new members, installation of officers, or the taking of a question by "yeas" and "nays"; and no member shall be allowed to leave the Local Union meeting without the permission of the presiding officer, under penalty of twenty-five cents (25c) fine.

Section 14. When a motion has been declared carried or lost by acclamation, any member, before the Local Union proceeds to other business, may call for a count, but the "yeas" and "nays" cannot be called unless demanded before the President rises to put the question.

Section 15. The "yeas" and "nays" may be called for by two (2) members and upon the assent of one-third (⅓) of the members present shall be taken.

Section 16. A motion to adjourn having been put and lost shall not be in order again, provided there is further business before the Local Union, until fifteen (15) minutes have elapsed.

Section 17. No subject of a political or religious nature shall be at any time admitted, under a penalty of fifty cents (50c) fine, but subjects which affect the economic welfare of our members shall not be prohibited even though they are political in nature.

Section 18. All business done in the Local Union shall be strictly secret to all outside the Local Union.

Section 19. (a). All and other proceedings in debate, not herein provided for, to be governed by Roberts' Rules of Order.

(b). One (1) tap of the gavel shall call to order; two (2) taps to be seated; three (3) taps to rise.

Article XXIV

SAVING CLAUSES

Section 1. The provisions of this Constitution relating to the payment of dues, assessments, fines or penalties, etc., shall not be construed as incorporating into any union-security contract those requirements for good standing membership which may be in violation of applicable law, nor shall they be construed as requiring any employer to violate any applicable law. However, all financial obligations imposed by or under this Constitution and Local Union by-laws (and in conformity therewith) shall be legal obligations of the members upon whom imposed and enforcible in a court of law.

Section 2. If any provision of this Constitution shall be declared invalid or inoperative, by any competent authority of the executive, judicial or administrative branch of federal or state government, the International Unions General Executive Board shall have the authority to suspend the operation of such provision during the period of its invalidity and to substitute in its place and stead a provision which will meet the objections to its validity and which will be in accord with the intent and purpose of the invalid provision. If any Article or Section of this Constitution should be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid, shall not be affected thereby.

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IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

No. 515-59 WB

UNITED STATES OF AMERICA, Plaintiff,

—vs.—

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS, Defendants.

MEMORANDUM OF DECISION—June 30, 1961

The United States filed its complaint under Section 4 of the Sherman Act (15 U.S.C.A. § 4) seeking to prevent and restrain a continuing violation by defendants of Section 1 of the Act (15 U.S.C.A. § 1).

The defendant Los Angeles Meat and Provision Drivers Union, Local 626, is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and has its principal place of business in Los Angeles, California. Defendant Meyer Singer is business representative of the Union who actively managed and coordinated the affairs and acts of the grease peddler members of the Union. Defendants Lee Taylor, Hubert Brandt, Walter Klein and Harold Carlis are grease peddler members of the Union.

"Grease peddlers" are defined as independent businessmen who are in the business of buying, transporting and selling waste restaurant grease for their own account. These self-employed peddlers have no established place of business; no employees, except an occasional loader; no

[fol. 43] capital investment, except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. Grease peddlers drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

The processing companies who buy the waste restaurant grease from the peddlers then convert it into yellow grease, which they sell either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries. Therefore, any restraint on or disruption in, or interference with, the purchase of waste restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of waste grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce.

Prior to 1954, the grease peddlers of Los Angeles were not members of, or in any way affiliated with, any labor union. However, in the fall of 1954, the defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership, Union representatives, including defendant Singer, proposed the following general plan: The Union would increase the profits of the grease peddlers by increasing the margin between the prices paid by said peddlers for restaurant grease and the prices they would be paid by processors; grease peddlers would be prevented [fol. 44] from soliciting or buying grease from the accounts of other peddlers; the processors would be required to deal only with those grease peddlers who were members in good standing of the Union; and unless grease peddlers became members of the Union, they would have no place to sell their restaurant grease and would be forced out of business.

In October 1954, a majority of grease peddlers in Los Angeles County, including defendants Taylor, Braudt,

Klein and Carlis, joined the defendant Union, thereby agreeing to make operative the plan outlined by defendant Singer and other Union representatives.

During the period between October 1954 and May 27, 1959 (the period covered by the complaint), there were in Los Angeles County about 40 to 50 grease peddlers, 35 to 45 of whom were members of defendant Union. After April 1955, these grease peddlers held their membership in a subdivision of the Union known as Local 626-B.

During this same period, there were in Los Angeles County eight processors of yellow grease, six of which acquired all or most of their waste grease from grease peddlers.

The parties filed a stipulation providing that seventy-two facts set forth therein were admitted, required no proof and should be accepted by the court as being true for purposes of the instant action. These facts relate in detail the plan and the activities of the defendants, and support fully the allegations of the complaint that defendants were guilty of price-fixing and elimination of competition in the gathering and sale of waste grease in the Los Angeles area.

It is further stipulated:

1. That the acts of defendants and their co-conspirators constitute a direct, substantial and unreasonable restraint upon foreign trade and commerce in yellow grease;

[fol. 45] 2. That defendants unlawfully combined and conspired in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

3. That the court may enter judgment that defendants have violated Section 1 of the Sherman Act as charged in the complaint.

4. That plaintiff is entitled to injunctive relief perpetually enjoining defendants from participating, and from forcing the processors to participate, in any plan the purpose and effect of which is to fix prices and eliminate competition in the peddlers' gathering grease and selling it to processors.

The sole remaining issue in the case is whether the decree should include a provision that the Union be ordered to terminate the membership of peddlers and be perpetually enjoined from accepting peddlers as members, unless they become bona fide employees, and that the peddler defendants be enjoined from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Defendants' first argument in opposition to the ouster of peddlers from defendant Union, is that "membership of peddlers in a union does not transform the union into an illegal combination in restraint of trade under the anti trust laws." The proposition thus stated appears to be pointless, inasmuch as plaintiff and defendants have stipulated to the fact that the defendants (including the Union and its peddler members) "*unlawfully combined and conspired in unreasonable restraint of foreign trade* and commerce in yellow grease in violation of Section 1 of the Sherman Act." (Italics added.)

The issue at hand is whether, under the facts as stipulated, the court may properly enter a decree compelling [fol. 46] the defendant Union to oust its peddler members. Defendants cite many Supreme Court cases which they claim condone a union's taking independent contractors into membership. Therefore, what defendants are presumably arguing is that since there is nothing illegal per se about an independent contractor's joining a union, this court has no power to compel the expulsion of defendant peddlers from defendant Union.

It may be noted at the outset that the precise issue of whether an independent contractor may properly join a union, appears never to have been before the Supreme Court. At any rate, this issue was not decided in any of the cases cited by defendants in their brief. A reading of these cases discloses that only in the most indirect fashion did the court indicate its views as to the propriety of extending union membership to independent contractors, jobbers, vendors, or the like.

For example, in *Bakery Drivers Local* v. *Wohl*, 315 U.S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1941), in an effort to

compel peddlers (independent jobbers) to join the bakery drivers' union, members of that union had peacefully picketed bakeries from which peddlers obtained their goods, carrying placards with the peddlers' names and a true statement of the union's grievances. The Supreme Court held that a state court injunction against such picketing was an unconstitutional invasion of the right of free speech.

From the facts and the decision of the *Bakery Drivers* case, it may be obliquely inferred that peddlers can join, or properly be coerced to join, a union when they are engaged in the same kind of work as union members and *compete* with the members, thus lowering the working conditions and wages of the latter.

[fol. 47] Another case cited by defendants is *Milk Wagon Drivers' Union V. Lake Valley Farm Products*, 311 U.S. 91, 61 S. Ct. 122, 85 L. Ed. 63 (1940). Here, the Supreme Court held there existed a "labor dispute" within the meaning of the Norris-La Guardia Act; and, the requirements of this Act not having been met, the District Court had no jurisdiction to grant an injunction, notwithstanding that the suit was based upon alleged violation of the Sherman Act. The *Milk Wagon Drivers'* court did not pass even indirectly upon the question of whether the picketing had a legitimate objective. The only point of the case for the purpose of this discussion is that it furnishes another instance of a union's attempt to compel the joinder of self-employed persons whose activities tend in some manner to compete with the functions of union members, thus affecting unfavorably the wages and employment of the union members.

Upon the basis of the *Bakery Drivers* and *Milk Wagon Drivers'* cases, supra, it may be said that the Supreme Court apparently and impliedly sanctions the union's coercing the joinder of independent contractors, jobbers or vendors (1) if these groups compete with union members by doing the same or similar work; and (2) if the object of having these groups join the union is to eliminate their unfair competition with union members, and the consequent lowering of the wages and working conditions of union members.

In the instant case, the facts contained in the stipulation show that neither of these conditions for the proper joinder of independent contractors with a labor union, is present.

The members of defendant Union (Los Angeles Meat and Provision Drivers Union, Local 626) are truck drivers [fol. 48] engaged in loading, unloading and transporting meat and meat products for packing houses and related employers. Every processor of yellow grease in the Los Angeles area has employees who are members of the defendant Union.

The grease peddler defendants are independent, self-employed businessmen who purchase waste grease from restaurants and other institutions, and then transport the grease in their own trucks to the processing companies, to whom they sell the grease.

These facts do not show that there is competition between the peddlers and the union employees of the processors. On the contrary, there is no competition between these groups because each is engaged in a different line of work, the peddlers buying grease, transporting and selling it to the processors, and the union members performing other functions for their employers (the processors).

The defendant Union solicited the membership of the peddler defendants not for the purpose of raising the wages and working conditions of the peddlers and the union employees of the processors, but for the sole purpose of increasing the income of the peddlers alone, and enabling the Union, the peddlers and the processors to control the business of purchasing and selling waste grease in the Los Angeles area.

In *United States* v. *Fish Smokers Trade Council, Inc.*, 183 F.Supp. 227 (S.D.N.Y., 1960), which is quite similar on its facts to the instant case, the court concluded that the jobbers (independent businessmen) were not a proper subject of unionization because, regardless of how the jobbers were characterized, there was no competition between them and the union employees.

[fol. 49] The *Fish Smokers* case involved a suit under Section 4 of the Sherman Act to prevent and restrain continuing violations by defendants of Section 1 of the Act. There, the defendant Union had a total membership of about 700, of which about 75 were jobbers (the counterpart of the peddlers here) who purchased fish from smokehouses for resale to customers. The remaining members of the defen-

dant Union were true employees, a number of whom performed the same function in their capacity as employees of the employer smokehouses, i.e., the employees delivered the fish from the smokehouses to wholesale or retail outlets. The jobbers had joined the Union because of an agreement between the Union and the smokehouses providing that the latter would not sell fish to jobbers who were not Union members. This agreement the Union enforced by threats of strikes against smokehouses refusing to boycott non-Union jobbers.

Under these facts, the court concluded that the jobbers were not properly Union members, stating at pages 234 and 235 of 183 F. Supp.:

> "*If the work and functions they* [the jobbers] *performed in the smoked fish industry conflicted with or competed with the work and functions performed by the chauffeur employees of the smokehouses, and affected the hours, working conditions and wages of the same, then regardless of what they called themselves, the jobbers would lawfully be forced into the Union.* However, it is evident that the mere fact that the jobbers worked long hours and at times earned less than the chauffeur employees had no effect on the working conditions or wages of the chauffeurs—other than the inevitable causal effect which demand or lack of de-[fol. 50] mand of smoked fish by the jobbers and their customers would have on its production by the smokehouses and their employees. *There was no competition in any respect between the chauffeurs and the jobbers*—if any, it was between the smokehouses who sold retail and the jobbers. *Although 'the physical aspect of the work of these two groups is similar, 'the economic and social difference between them lies in the method of compensation and return for their toil.'* People v. Distributors Division, 169 Misc. 255, 7 N.Y.S. 2d 185, 187. (Italics added.)
>
> "The demands which were made by the Union of the smokehouses on behalf of the jobbers in 1954—excepting perhaps that concerning the welfare and pension

> funds—were purely the demands and requirements of an independent business man having to do with extension of credit, price and discrimination, and not with wages, working conditions or hours, of employees. * * *"

Thus, the rationale of the court in the *Fish Smokers* case, supra, appears to substantiate the inference drawn from the two Supreme Court cases discussed earlier, namely, that the membership of so-called "independent contractors" in a labor union is not proper unless the purpose of the membership is to secure better wages and working conditions for all union members through the elimination of competition caused by the fact that the independent contractor and the union employees perform the same function.

However, the true significance of the *Fish Smokers* case is not that it merely states the circumstances under which independent contractors may not properly be forced into [fol. 51] a union. Rather, the real importance of this decision lies in the fact that it indicates the *result* of such a misalliance, which is that the union and the independent contractors have put together a combination in restraint of trade, in violation of the Sherman Act. The court makes this clear by stating at page 229 of 183 F. Supp.:

> "There is one principal issue raised by the pleadings and that is whether the jobbers are independent business men as plaintiff maintains and therefore not a proper subject of unionization; if they are, then it follows that the defendants' alleged activities in forcing them into the Union and into agreements to allocate their customers is an act in restraint of trade within the stricture of the antitrust laws, Allen Bradley Co. v. Local Union No. 3, 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939. If, however, these jobbers are a labor group as defendants contend, then their activities are protected by the Clayton and Norris-LaGuardia Acts and under Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products, 311 U.S. 91, 61 S.Ct. 122, 85 L.Ed. 63."

and again at page 234:

> "But whether such agreement among the smokehouses, the Union and the jobbers was simply the usual closed shop labor agreement in order 'to see that each of them (the Jobbers) earns a living, and that not one guy gets it all * * * and that everyone gets an even break.' as defendant argues, and consequently lawful under the Milk Wagon Drivers' Union decision, or whether it was really a conspiracy masquerading as a labor agreement in order to restrain competition be- [fol. 52] tween business men as in Allen Bradley Co. v. Local Union No. 3, supra, * * *, depends on whether the jobbers, although so-called independent business men, were really a labor group."

Defendant peddlers and the defendant Union's employees in this case did not compete with each other. Therefore, the peddlers are not a labor group and are not the proper subject of unionization. Moreover, in this case the peddlers were taken into the defendant Union for the purpose of raising their income and enabling the Union, the peddlers and the processors to put together a combination to control the business of buying and selling waste grease in the Los Angeles area, thereby restraining foreign commerce in yellow grease in violation of the Sherman Act.

Defendants contend that it is not possible to grant the relief sought by plaintiff because of Section 6 of the Clayton Act [15 U.S.C.A. § 17][1] and Section 4(b) of the Norris- [fol. 53] La Guardia Act [29 U.S.C.A. § 104(b),].

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[1] Title 15 U.S.C.A.

"§ 17. Antitrust laws not applicable to labor organizations

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members

(footnote 2 on next page)

It has long been settled law that neither the Clayton Act nor the Norris-La Guardia Act permits labor unions to combine with other, non-labor groups for the purpose of monopolizing trade in violation of the Sherman Act. *Allen Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939 (1945); *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 62 S.Ct. 520, 86 L.Ed. 750 (1942).

In *Allen Bradley Co.* v. *Local Union No. 3*, supra, the Electrical Workers Union and its members, prompted by the desire to get and hold jobs for themselves at good wages and under high working standards, combined with employers and manufacturers of electrical equipment to restrain competition in, and to monopolize the marketing of, [fol. 54] electrical equipment. The Supreme Court held that the Union's activities constituted a violation of the Sherman Act, despite the provisions of the Clayton and Norris La Guardia Acts. In this regard, the court made the following pertinent observations at pages 809 and 810 of 325 U.S.:

> "* * * Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining

---

thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

Title 29 U.S.C.A.

"§ 104. Enumeration of specific acts not subject to restraining orders or injunctions

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"* * *

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as described in section 103 of this title;"

agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one element in a far larger program in which the contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level: * * * *[W]hen the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-La Guardia Acts.* (Italics added.)

"It must be remembered that the exemptions granted the unions were special exceptions to a general legislative plan. The primary objective of all the Anti-trust legislation has been to preserve business competition [fol. 55] and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. *For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves.* Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. *Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.*" (Italics added.)

Columbia River Packers Ass'n v. Hinton, 315 U.S. 143, 62 S.Ct. 520, 86 L.Ed. 750 (1940) is another instance where the Supreme Court held that injunctive relief was not barred by the Norris-La Guardia Act, when a violation of the Sherman Act was involved.

In the instant case, Section 6 of the Clayton Act (15 U.S.C.A. 17, supra) does not sanction the alliance of the peddler defendants and the defendant Union, because such alliance was not formed for the purpose of "mutual help", but rather for the purpose of enabling the peddlers, the Union and the processors together to obtain control of the waste grease trade in the Los Angeles area, with consequent restrictions upon the free flow of yellow grease in foreign commerce. As stated in the *Hunt Foods* case, supra, Congress did not intend to permit violations of the Sherman Act to go unpunished merely because a labor union is one of the parties to the unlawful combination condemned by that Act.

[fol. 56]

Nor does the Norris-La Guardia Act furnish refuge for the defendants. The strikes and picketing here involved are not "labor disputes" within the meaning of the Act; for these disputes grew out of the refusal of some of the processors to buy waste grease only from Union peddlers, and in no way related to the improvement of wages or working conditions of the Union members. The instant case is clearly parallel to the *Columbia Packers* case, supra, in that the disputes centered about the processors' purchase of a commodity (waste grease), and in no wise related to the employer-employee relationship. Therefore, Section 4(a) of the Norris-La Guardia Act (29 U.S.C.A. 104(a), supra) does not prohibit the issuance of a decree which would terminate the membership of grease peddlers in defendant Union.

Defendants assert that this court cannot frame a decree compelling defendant Union to oust its grease peddler members, because such a decree would violate due process by abrogating the contract rights of those who are not parties to the within proceeding.

Defendants' argument runs thus: The defendant Union is affiliated with the International Brotherhood of Team-

sters, Chauffeurs and Warehousemen. Both the defendant Union and other unions affiliated with the International Brotherhood, have peddler members. Since neither the International Brotherhood nor its other affiliated unions are parties to this action, a decree of this court ordering the [fol. 57] ouster of grease peddlers from the defendant Union, would violate due process by abrogating the contracts between the absent unions and their peddler members.

To state this argument is to refute it: for how can a decree ordering the defendant Union to expel its grease peddler members, possibly affect the contracts between other unions in the International Brotherhood and their peddler members?

In support of their contention, defendants cite *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126 (1938) and *N.L.R.B.* v. *Sterling Electric Motors*, 112 F. 2d 63 (9th Cir., 1940). In both of these cases the issue under consideration was whether the National Labor Relations Board had jurisdiction to enter orders affecting vital rights of union members without first giving the union notice or an opportunity to be heard.

This issue is not pertinent in the instant case: for here, the decree terminating the peddlers' membership in the Union would be rendered by a court of the United States and not by an administrative agency, such as the National Labor Relations Board. Furthermore, such a decree would be rendered only after having given the interested parties (Local Union 626, including its grease peddler members) a full hearing. Surely it cannot be seriously contended that the International Brotherhood and its other affiliated unions are "interested parties" to a decree which would terminate only the membership of grease peddlers in Local 626, and would in no wise affect the membership of other peddlers in Local 626, or of grease peddlers or any species of peddlers in any other union affiliated with the International Brotherhood.

[fol. 58] The mandatory injunction sought by plaintiff would embody a provision that the Union be ordered to terminate the membership of peddlers in said Union and be perpetually enjoined from accepting peddlers as members thereof, unless they become bona fide employees.

Defendants argue that such a mandatory provision is too vague and broad because it would expel from defendant Union not only the 30 or 40 grease peddler members, but in addition all of the Union's 500 or 600 peddler members.

The term "peddlers" as used throughout this action is defined by sub-paragraph 15, Paragraph IV of the complaint (page 3) as "persons who are self-employed entrepreneurs engaged in the business of buying and selling restaurant grease for their own account from restaurants, hotels, and institutions, transporting said grease in trucks owned or operated by themselves to the plants of processors, and selling such restaurant grease to said processors."

Such a definition certainly excludes all peddler members of defendant Union who deal in any commodity other than waste restaurant grease. Therefore, a decree compelling defendant Union to oust peddlers from its ranks would not be too vague or too broad because it would not affect the membership of any but the *grease* peddlers, whose activities as Union members are stipulated to have contributed to the violation of Section 1 of the Sherman Act.

However, any remaining doubt as to which Union members would be reached by the mandatory injunction, could be quickly dispelled simply by inserting the adjective "grease" before the noun "peddlers" in the final form of the injunction.

Defendants next argue that the proposed mandatory in-
[fol. 59] junction is punitive because the expulsion of grease peddlers from defendant Union is not necessary in order to insure against possible future violations of the Sherman Act by defendants.

In antitrust cases, it is the duty of the court to frame its decree so as to suppress the unlawful practices and to take such reasonable measures as will preclude their revival. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160 (1944); *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436, 60 S.Ct. 618, 84 L.Ed. 852 (1940).

Accordingly, in recent years the Supreme Court has, upon at least three occasions, approved antitrust decrees providing for dissolution or divestiture in order to put an end to combinations whose activities violated the Sherman

Act. *International Boxing Club* v. *United States*, 358 U.S. 242, 79 S.Ct. 245, 3 L.Ed. 2d 270 (1959); *Schine Theatres* v. *United States*, 334 U.S. 110, 68 S.Ct. 947, 92 L.Ed. 1245 (1948); *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 65 S.Ct. 254, 89 L.Ed. 160 (1944).

In *International Boxing Club* v. *United States*, supra, the District Court found, as the Government had charged, that defendants had violated §§ 1 and 2 of the Sherman Act by conspiring to restrain interstate trade and commerce in, and by monopolizing, the promotion, broadcasting and televising of world championship boxing contests. After further hearings on the nature and extent of the relief necessary to protect the public interest, the District Court entered a final judgment dissolving the international boxing clubs, directing the individual defendants to divest themselves of their stock in Madison Square Garden, and granting injunctive relief designed to open up the market in [fol. 60] the business of promoting professional world championship boxing matches.

The Supreme Court affirmed the judgment, holding that the relief granted was not beyond the allowable discretion of the District Court.

In *United States* v. *Crescent Amusement Co.*, supra, the United States brought civil suit against nine affiliated companies operating motion picture theaters throughout five States, and against eight major distributors of motion pictures, charging them with conspiracy to restrain interstate trade and commerce in motion picture films and to monopolize the exhibition of films in violation of §§ 1 and 2 of the Sherman Act. The District Court found that certain of the defendants had violated the Act, and entered a decree which required, among other things, that the corporate exhibitors divest themselves of ownership of stock or any other interest in any other corporate defendant, and that certain corporate officers resign from their positions. The Supreme Court affirmed the divestiture and resignation provisions of the decree.

In the instant case, the stipulated facts clearly show that before the grease peddlers joined the defendant Union, there was no suppression of competition among them, and

that only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition in the purchase and sale of waste grease, and to drive several processors out of business.

As long as this association of the peddlers and the Union continues, there is danger that their combined activities will be revived and that further suppression of competition in the yellow grease industry will result. To borrow the [fol. 61] language of the Supreme Court in the *Crescent Amusement Co.* case, supra, "The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future."

Therefore, far from being punitive, a decree terminating the membership of the grease peddlers in defendant Union appears to be the most effective, if not the only, means of preventing a recurrence of defendants' unlawful activities.

The decree shall include a provision ordering defendant Union to terminate the membership of its grease peddler members, and perpetually enjoining the Union from accepting grease peddlers as members unless they become bona fide employees. It shall also enjoin the peddler defendants from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Counsel for plaintiffs is directed to prepare, serve and lodge findings and judgment in accordance with local rule 7.

Dated June 30, 1961.

Wm. M. Byrne, United States District Judge.

[fol. 62] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Civil Action No. 515-59-WB

UNITED STATES OF AMERICA, Plaintiff,

—v.—

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS, Defendants.

Findings of Fact, Conclusions of Law, and Final Judgment —July 14, 1961

FINDINGS OF FACT

1. Defendant Los Angeles Meat and Provision Drivers Union, Local 626, transacts business and is found within the Central Division of the Southern District of California. It is a voluntary unincorporated labor organization affiliated with and chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, composed of some 2,400 members, most of whom were and are truck drivers engaged in loading, unloading, and transporting meat and meat products for packing houses and related employers. Between October 1934 and May 27, 1959 (the period covered by the complaint herein), from about 35 to about 45 grease peddlers were members of said defendant Union, and after April 1955, they held their membership in a subdivision within said defendant Union known as Local 626-B.

[fol. 63] 2. Defendant Singer, during the same period, was employed as a business representative of defendant Union. He is not and has not been an officer or an elected official, or executive board member, of defendant Union.

3. Defendants Taylor, Brandt, Klein, and Carlis, during said period from October 19, 1954 to May 27, 1959, were grease peddler members of defendant Union.

4. Throughout the period from October 1954 to May 1959, inclusive, A. J. Menard was secretary-treasurer of defendant Union; and Charles Rico and Mike Grancich were employed by defendant Union in the capacity of business representatives.

5. During the 1954-1959 period, there were in Los Angeles County, California, about 40 to 50 grease peddlers. A grease peddler is a man who purchases restaurant grease primarily from hotels, restaurants, and institutions, transports said grease in a truck owned or rented by said grease peddler, from the places where he buys the grease to the plant of a grease processor, and sells said grease to said processor. Grease peddlers are independent businessmen who are engaged in the business of buying, transporting, and selling restaurant grease for their own account. They are not employees of the grease processors.

6. These self-employed peddlers have no established places of business; no employees, except an occasional loader; no capital investment except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

7. Yellow grease is inedible grease produced primarily by removal of most of the water and solid impurities from restaurant grease. Restaurant grease is waste grease

resulting from the preparation of foods in kitchens of res- [fol. 64] taurants, hotels, and institutions.

8. The process by which restaurant grease is converted into yellow grease involves the heating of the restaurant grease to a fluid form, and the extraction therefrom of most of the moisture and solid impurities by straining, settling, evaporation, or centrifuging, or a combination thereof. Restaurant grease is customarily converted into yellow grease on the same day it is delivered to a processing plant, or within twenty-four hours. The yellow grease is usually shipped from the processing plant to buyers thereof as soon as sufficient quantity is accumulated to fill a tank truck.

9. During part or all of the period between 1954 and 1959, there were in Los Angeles County, California, eight companies engaged in the production of yellow grease.

10. Six of these producers of yellow grease, hereinafter referred to as processors, acquired from grease peddlers all, or a substantial part, of the restaurant grease from which their yellow grease was made.

11. The names of these six processors, and the periods of time in which they produced yellow grease, are as follows:

B & H Processing Company	1954-1959
Washington Rendering Company	1954-1959
Peterson Manufacturing Co.	1954-1959
Allied Grease & Tallow Co.	1954-1956
Star Grease Company	July 1958-1959
Harbor Industrial Sales	Dec. 1955-April 1956

12. The combination and conspiracy alleged in the complaint primarily involved and directly affected, foreign trade and commerce in yellow grease produced by the six processors named in paragraph 11 hereof.

13. B & H, Allied, Star, and Harbor Industrial Sales purchased from grease peddlers practically all of the restaurant grease used by them in the production of yellow grease. Washington bought from grease peddlers about

four-fifths of the restaurant grease used in its production of yellow grease. Peterson, from May 1956 to August 1958, [fol. 65] purchased from grease peddlers about half of the restaurant grease used in its production of yellow grease. The remainder of the restaurant grease used by Washington and Peterson was purchased directly by them from hotels, restaurants, and institutions.

14. The remaining two producers of yellow grease, who operated throughout the 1954-1959 period, were Baker Rendering Company and Western Tallow Processors. They made few, if any, purchases of restaurant grease from grease peddlers and purchased directly from restaurants, hotels, and institutions substantially all of the restaurant grease used in their production of yellow grease.

15. Baker, Western Tallow, and Peterson, in addition to the production of yellow grease, also collected and processed suet and packing and poultry house by-products into tallows and fertilizers. Washington also collected and processed poultry by-products into animal feeds.

16. For many years Baker, Western Tallow, Peterson, and, to a lesser extent, Washington, used the services of employee-truck driver members of defendant Union under union contracts, to pick up and transport the restaurant grease and other meat waste purchased by them directly from hotels, restaurants, and institutions. Such purchases and collections were usually made from larger establishments, and grease peddlers usually acquired restaurant grease from smaller establishments and other sources where the supply of restaurant grease was relatively small or irregular in availability.

17. The processors usually sell yellow grease under contracts calling for deliveries of specified quantities on future dates, from 30 to 60 days after the execution of the contracts. The processors then purchase restaurant grease in order to produce the yellow grease they have already contracted to sell and deliver.

18. A substantial part of the yellow grease produced by those processors who purchased restaurant grease from

grease peddlers was sold by said processors either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries.

[fol. 66] 19. A substantial amount of yellow grease produced by Peterson was sold and shipped by Peterson directly to buyers in foreign countries. A substantial amount of yellow grease produced by Washington, B & H, Allied, Star, and Harbor Industrial Sales was sold to Baker Rendering Company and Pacific Vegetable Oil Corporation, and nearly all of the yellow grease so sold to those companies was sold and shipped by them to buyers in foreign countries without further processing or change in composition or form. The yellow grease so purchased by Baker and Pacific Vegetable Oil was purchased with intent to use said yellow grease in filling orders from foreign countries, and was in fact so used.

20. Nearly all yellow grease sold to Baker Rendering Company and to Pacific Vegetable Oil Corporation is delivered by the processors by tank trucks to storage tanks of the buyers located on piers in the Wilmington or Long Beach harbors. The yellow grease so delivered is transferred from said storage tanks into ships for transportation to foreign countries as soon as sufficient quantities are accumulated to fill orders from foreign buyers. The yellow grease so shipped to foreign countries undergoes no processing or change in form or composition after delivery at the piers, except sufficient heating to facilitate its transfer from storage tanks to ships.

21. Within the period from January 1957 to February 1959, Washington, B & H, Star, and Peterson produced about 27,000,000 pounds of yellow grease, of which more than 10,000,000 pounds were sold and shipped in foreign commerce. In addition, substantial amounts of yellow grease were produced by Baker and Western Tallow Processors.

22. Within said period, Washington, B & H, Star, and Peterson purchased from grease peddlers over 23,000,000 pounds of restaurant grease, exclusive of the amount of restaurant grease purchased by Peterson from peddlers in

1957, the amount of which is unknown. In addition, substantial amounts of restaurant grease were acquired by Baker, Western Tallow Processors, Peterson, and Washington directly from hotels, restaurants, and institutions through employee-drivers.

[fol. 67] 23. The purchase, transportation, and sale of restaurant grease by peddlers, the production of yellow grease by processors from restaurant grease purchased by them from peddlers, and the sale of said yellow grease for shipment in foreign commerce, are integral and essential parts of the flow of yellow grease in foreign commerce. Any restraint on or disruption in, or interference with, the purchase of restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of restaurant grease by peddlers, and the purchase of restaurant grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce. Any restraint upon, or interruption of or interference with the purchase of restaurant grease from peddlers by processors, or the delivery of restaurant grease by peddlers to processors, necessarily directly restrains and affects the production of yellow grease by said processors and its flow in foreign commerce.

24. Beginning in the fall of 1954 and continuing thereafter to and including the month of May 1959, defendant Union, certain of its officers and employees, including defendant Singer, a majority of the grease peddlers in Los Angeles County, California, including defendants Taylor, Brandt, and Klein, and certain processors, all engaged in a combination and conspiracy to suppress and eliminate competition among and between grease peddlers in the purchase and resale of restaurant grease, and to suppress and eliminate competition among and between processors in the purchase of restaurant grease from peddlers.

25. In the years 1952 to 1954, the level of prices paid to peddlers by processors for restaurant grease, and the prices received by processors for yellow grease, had fallen to less than half of the prices that had prevailed for several

preceding years. The incomes of peddlers were substantially reduced, and as a consequence, peddlers sought to increase their volume of grease to maintain their incomes. This led to intensive competition among peddlers, both as to prices offered to hotels and restaurants, and attempts of many peddlers to take over the grease producing accounts or "stops" of other peddlers.

[fol. 68] 26. In or about the early fall of 1954, defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership in said union, representatives of the union, including defendant Singer, proposed the following general plan or program: The union would increase the profits of the grease peddlers by increasing the margin between the prices paid by said peddlers for restaurant grease and the prices they would be paid by processors; that grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; that the processors would be required to deal only with those grease peddlers who were members in good standing in the union; and that unless grease peddlers became members of the union, they would have no place to sell their restaurant grease and would be forced out of business.

27. At a meeting of about ten peddlers in October 1954, Singer urged the peddlers to become members of defendant Union. He said that the grease buyers had organized in New York City and that routes had been assigned among the peddlers so that each one had his own route, competition for accounts had been eliminated, and each peddler could reduce the price he paid for grease without fear that his account would be taken over by another peddler. Singer said that if the peddlers would join defendant Union, the same arrangement would be worked out in Los Angeles, and that everyone would have to go along or be put out of business by the Union.

28. In or about the month of October 1954, a majority of the grease peddlers in Los Angeles County, including

defendants Taylor, Brandt, Klein, and Carlis, joined the defendant Union and became parties to and agreed to engage in the program which had been proposed by defendant Singer and other union representatives as set forth in paragraph 26, above.

29. At or about the same time, defendant Singer informed processors B & H and Allied that they would not be permitted by the defendant Union to purchase grease from non-union peddlers, and that if they did so, the union grease peddlers would not sell restaurant grease to them, [fol. 69] and they would be picketed by the union. At that time B & H and Allied agreed with defendant Singer that they would not purchase restaurant grease from non-union peddlers, thereby becoming parties to the combination and conspiracy alleged.

30. During the entire period from October 1954 to May 1959, inclusive, the grease peddler members of defendant Union were established and recognized by defendant Union as a group or segment separate and distinct from employee members of defendant Union. Throughout the said period, meetings of the grease peddler members of defendant Union were called by defendant Singer or Al Menard, secretary-treasurer of defendant Union, and said meetings were held, separate from meetings of employee members of defendant Union. In April 1955, the grease peddler members of defendant Union were placed in a division of defendant Union named Local 626-B. The great majority of the grease peddlers in Los Angeles County, California, were members of defendant Union from 1954 to 1959, inclusive.

31. From the month of October 1954 to the month of May 1959, inclusive, defendant Singer was assigned by defendant Union to work with and to conduct the affairs of the grease peddler segment of the union.

32. Beginning in or about the month of November 1954 and continuing thereafter to the year 1957, defendant Singer determined the prices to be paid by processors to peddlers for restaurant grease and the processors agreed to and did pay the prices so fixed and determined by defendant Singer.

33. Throughout the period from October 1954 to May 1959, inclusive, grease peddler members of defendant Union were instructed by defendant Singer to refrain from soliciting, or buying restaurant grease from, the accounts of other peddlers, and the grease peddler members of defendant Union agreed so to do.

34. During said period defendant Singer allocated accounts among union grease peddlers in all instances in which there were disputes as to said accounts, and defendant Singer, in conjunction with the committee, and sometimes with approval of the grease peddler segment of defendant [fol. 70] Union, imposed fines or suspensions on grease peddler members failing to adhere to such allocations or who solicited or purchased grease from the accounts of other peddlers. During the period of such suspensions, the suspended grease peddlers were prohibited and prevented from selling their grease to processors.

35. From time to time, Singer allotted territories to various Union peddlers, and told other peddlers that they must stay out of those territories. Certain peddlers were suspended from the Union for failure to follow these instructions, and thereby prevented from selling grease to processors.

36. In November 1954, a majority of the Union grease peddlers formed a trade association named Los Angeles Grease Buyers Association, to help to improve the condition and standing of peddlers, by eliminating the theft of grease and adherence to a code of ethics. The association had no procedure under which it was able to discipline members or enforce adherence to its activities. In March 1955, at a meeting of Union peddlers, defendant Singer told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do. He referred to the prosecution of rubbish collectors and a man named Matula, and said that this showed the danger of acting through an association as against action through a union. As a result of this meeting, the association became defunct.

37. In February 1955, defendant Singer called a strike against Washington Rendering Company, and established around the plant of said company a picket line composed of grease peddler members of defendant Union, because it had purchased restaurant grease from a grease peddler who was not a member in good standing in defendant Union. The plant was completely closed down because of this strike and picket line. Defendant Singer demanded that Washington agree not to make any further purchases of restaurant grease from any grease peddler who was not a member in good standing of defendant Union, as a condition to lifting the strike and removing the picket line. The strike was lifted and the picket line was removed [fol. 71] when Washington agreed that it would not buy restaurant grease from non-union grease peddlers, and thereby became a party to the combination and conspiracy alleged.

38. In March 1955, Singer and Mike Grancich, business agents of defendant Union, went to the plant of a man named Schrader who was engaged in the processing of fish oils and told him that unless he stopped buying grease from two non-union peddlers, he would have union trouble. Schrader complied with this demand.

39. In 1955, Singer asked Sam Stone, owner of Allied Grease and Tallow Company, to write a $100 check to defendant Union to pay the initiation fee of a peddler named Galerkin, who theretofore had been a non-union peddler and who had agreed to join the Union if he would thereby be enabled to sell his grease to processors. Mr. Stone issued the check. Galerkin was admitted to defendant Union, and began selling grease to Allied.

40. In November 1955, defendant Singer called a strike against Baker Rendering Company and established around the plant of said company a picket line composed of grease peddler members of defendant Union because said company allegedly had made a purchase of restaurant grease from a peddler who was not a member in good standing of defendant Union.

41. In January 1956, defendant Singer established a picket line around the processing plant of Harbor Industrial Sales, which had entered into the business of processing restaurant grease into yellow grease about the middle of December 1955. Harbor was purchasing restaurant grease from grease peddlers who were not members in good standing of defendant Union. This picket line was maintained for a period of several weeks. In addition, defendant Singer and the grease peddler segment of defendant Union sought to induce the grease peddlers who had been selling restaurant grease to Harbor Industrial Sales to join the union and to stop selling to that company. These efforts were successful and Harbor Industrial Sales ceased operations in April 1956 because of its inability to secure sufficient quantities of restaurant grease to continue its business.

[fol. 72] 42. Following the establishment of the picket line around the plant of Harbor Industrial Sales in early 1956, defendant Singer told the owner of that business that if he could learn the name of his landlord and the buyers to whom Harbor was selling yellow grease, that he would bring pressure through the Union to have Harbor's lease cancelled and to have the buyers stop dealing with Harbor. Singer said he did not want Harbor in the grease business.

43. In March 1956, the owners of B & H Processing Company were asked by Singer to loan $1,000 to a man named Bernard Kay, who had previously been operating as a non-union peddler, selling grease to Harbor Industrial Sales, and who had agreed to become a Union member. With knowledge that Kay was a poor credit risk, the owners of B & H loaned the money to Kay, because of fear of trouble with Singer and defendant Union unless they did so. Kay stopped selling to Harbor Industrial Sales and sold his grease to B & H for several weeks. The loan was never repaid.

44. In July 1958, a new company named Star Grease Company engaged in the processing of restaurant grease into yellow grease. A number of peddlers who had pre-

viously been selling restaurant grease to B & H Processing Company began to sell to Star Grease Company. As a result of this competition for the business of peddlers, the prices paid by processors for restaurant grease were increased.

45. At a meeting of the grease buyer segment of defendant Union in late August 1958, defendant Singer announced that thereafter no grease peddler would be permitted to pay more than one cent per pound for restaurant grease. This price of one cent constituted a substantial reduction from the prices which the peddlers had been paying for restaurant grease. At this meeting, defendant Singer gave instructions that all Union peddlers were to cease the sale of restaurant grease to Peterson Manufacturing Co. All grease peddlers who had been selling to said company immediately ceased such sales and thereafter made no sales of restaurant grease to Peterson. At this meeting, defendants Taylor, Brandt, and Klein were appointed members of a committee of the grease buyers seg- [fol. 73] ment of defendant Union to assist in policing, enforcing, and carrying out the program to suppress and eliminate competition among grease peddlers and among processors. Early in 1959, upon the resignation of defendant Klein from said committee, defendant Carlis was appointed as a member of said committee, and served thereafter to and including the month of May 1959.

46. Following the instructions given by Singer in late August 1958, that Union peddlers were to stop selling grease to Peterson Manufacturing Co., Singer told the president of that company that the purpose of the Union was to improve the lot of peddlers and the processors buying from peddlers, and that the peddlers would not be permitted ever again to sell to Peterson. Following that conversation no Union peddler in good standing has ever sold grease to Peterson, even following the filing of the complaint.

47. Some of the grease peddlers who had been selling to Peterson transferred their restaurant grease sales to Star and to B & H, but a major part of the volume of restaurant

grease which had previously gone to Peterson was transferred to Washington. Star appealed to defendant Singer and the grease peddler members of defendant Union to take action to cause more of the peddlers to transfer their business to Star.

48. In September 1958, Singer asked B & H Processing Company to help out Star Grease Company, which he said was having trouble selling its grease, by selling for Star about 80,000 pounds of grease. B & H sold this grease for Star, because they feared they would have trouble with Singer and defendant Union if they refused.

49. In early September 1958, defendant Singer was on a trip to Hawaii. During his absence, Star and B & H requested the union committee to reduce the price to be paid by processors to peddlers for restaurant grease. The committee refused to take action, and the owner of Star made a trip to Hawaii, financed in part by B & H, to appeal to defendant Singer for favorable action on the requested reduction in prices paid by processors to peddlers for restaurant grease. Defendant Singer agreed to take action [fol. 74] on the request upon his return to Los Angeles.

50. Following his return, at a meeting of the grease peddlers' segment of the union on September 18, 1958, defendant Singer called for a discussion of prices to be paid for restaurant grease by processors to peddlers. Defendant Singer then announced that the price would be reduced by ¾ cent per pound, effective on September 19, 1958. Beginning on September 19, B & H, Star, and Washington all reduced their prices ¾ cent per pound, and continued thereafter to pay this reduced price.

51. At the meeting on September 18, 1958, objections were made by some peddlers to the ruling that peddlers could not pay more than one cent per pound for restaurant grease, and a question was raised as to illegality of such a ruling. Defendant Singer emphatically stated that the one cent price was to be strictly followed, and that any peddler paying more would find himself in trouble. Singer said it would do no good for anyone to appeal to the federal

or local governments, because the union had plenty of money and would fight any effort to interfere with the union's activities.

52. At a meeting of the grease peddlers' segment of the union on October 15, 1958, a complaint was made against a peddler for trying to get a price for restaurant grease from a processor higher than the reduced price fixed by defendant Singer on September 18. The peddler was sentenced by defendant Singer to a suspension of one month. Another peddler was accused of paying more than one cent per pound for restaurant grease and was called upon by defendant Singer for an explanation. One week later this peddler was suspended for six months by defendant Singer, and was put out of business.

53. At the meeting on October 15, defendant Singer announced that he intended to divide the sales of restaurant grease by peddlers equally between the three processors, and he called a meeting on October 16, 1958, to be attended by himself, the union committee, and the processors.

54. The meeting on October 16, 1958, was attended by defendants Singer, Taylor, Klein, and Brandt, and by owners of B & H and Washington. Defendant Singer announced [fol. 75] that he was representing Star Grease Company. The processors were required to submit information concerning the volume of grease which they were purchasing from each peddler. The committee and defendant Singer reviewed these data and decided that certain peddlers would be shifted from Washington and B & H to Star in order to put all three processors on an approximately equal basis in the volume of grease purchased by them from peddlers. Defendant Singer announced the names of those peddlers who had previously been selling grease to Washington and B & H who would be required thereafter to sell to Star.

55. Immediately after this meeting, those peddlers named by defendant Singer were notified by the union committee of the action taken, and they ceased to sell grease to Washington and B & H and transferred their business to Star.

Washington and B & H lost a substantial volume of grease from grease peddlers, with resultant reduction in their production and sales of yellow grease, and the grease sold by grease peddlers to these processors was so divided and allocated that each of the three processors thereafter got approximately one-third of the restaurant grease sold by grease peddlers.

56. During the period from August 29 to the end of 1958, defendant Singer, and the union committee composed of defendants Taylor, Brandt, and Klein, made investigations and conducted hearings on complaints that union peddlers had solicited accounts of other peddlers, and had paid more for restaurant grease than the one cent maximum fixed by defendant Singer. Several peddlers were suspended for a month for violation of these orders. During the period of said suspensions, the suspended grease peddlers were prevented from engaging in the business of buying and selling restaurant grease.

57. In late 1958, Peterson made a purchase of grease from a peddler who had been suspended from the Union and Mike Grancich, business agent for defendant Union, called Peterson and said to stop buying grease from the peddler or Peterson would have labor trouble. Peterson complied with this demand because it wanted to avoid labor trouble.

[fol. 76] 58. In February 1959, after the owner of Washington Rendering Company publicly testified in a Congressional Committee concerning the aforesaid activities of defendant Singer and the defendant Union, several union peddlers, including defendants Taylor and Klein, stopped selling restaurant grease to Washington. Thereafter, for the first time since 1955, Washington made purchases of restaurant grease from non-union members. The union committee, at that time composed of Taylor, Brandt, and Carlis, arranged to have the trucks of said non-union peddlers followed to each of their accounts and subjected said non-union peddlers to harassment and threats of physical injury.

59. On May 12, 1959, a strike was called by defendant Union against Washington Rendering Company and a

picket line was established by defendant Singer around the plant of said company, which picket line was composed primarily of grease peddler members of defendant Union. This strike continued for more than two months and virtually stopped the yellow grease business of Washington.

60. The strike was called ostensibly on the ground that Washington Rendering Company did not have a labor contract with defendant Union. In fact, the strike was called in reprisal against the owner of Washington Rendering Company for his opposition to the above-described activities of defendant Union. The strike was subsequently declared by the National Labor Relations Board to be an illegal strike.

61. On the same day that the complaint herein was filed on May 27, 1959, an indictment was returned against defendant Union and defendants Singer, Taylor, Brandt, and Klein, charging violation of the antitrust laws in substantially the same terms as are charged in this complaint. In June 1959, while the plant of Washington Rendering Company was closed down because of the strike by defendant Union, defendant Singer spoke to Morris Gurewitz, proprietor of Washington Rendering Company. Singer blamed Gurewitz for having caused the indictment by testifying before the Senate Committee. Singer said that the Union could keep the strike going against Gurewitz for years.

[fol. 77] 62. During the pendency of a motion by the National Labor Relations Board in the United States District Court for the Southern District of California for an injunction against the strike, defendant Singer told Morris Gurewitz that although the Court might issue a 30- or 60-day injunction against the strike, when that time was up the defendant Union would have Gurewitz right back where he was before. Singer referred to the loss of business suffered by Gurewitz as a result of the strike, and told Gurewitz that his troubles with the Union were not over and would get worse. Singer said that Gurewitz also had employees in other unions and that if Gurewitz got an injunction against defendant Union, he would have trouble with other unions.

63. In October 1959, Singer boasted to Gurewitz about the trouble which had been caused Gurewitz by Singer and the Union, and said that Gurewitz would have more trouble. Singer said that even if he had to go to jail, the unions would keep Gurewitz in hot water, and that there were plenty of other people in the Union to take care of Gurewitz. Singer said that when the Union was through with Gurewitz, then it would start in on Ben Cohen, of B & H Processing Company, who had also testified before the Senate Committee.

64. During the course of the proceedings in the companion criminal case, resulting in pleas of *nolo contendere* by defendants Union, Singer, Taylor, Brandt, and Klein, the Government disclosed in a statement filed with the Court the activities of defendant Singer, and the committee composed of defendants Taylor, Brandt, Klein, and Carlis, described in detail in the foregoing paragraphs of this judgment. At no time has defendant Union taken any disciplinary action against defendant Singer or the members of the committee, or terminated the existence of the committee, or expelled from membership in the Union any of said defendants or other grease peddlers.

65. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to make use of peddlers for strike breaking purposes.

[fol. 78] 66. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the acquisition of restaurant grease.

67. Since this case was filed, defendant Union submitted statements to the Court in the companion criminal case, signed by numerous peddler members of said Union, stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease and paying too much for restaurant grease. These peddlers expressed their conviction that defendant Union is the only organization capable of accomplishing these results for them. The statements of each of these peddlers referred

to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to any benefit which might be derived by any employees of processors by reason of peddler membership in the Union.

68. Every processor of yellow grease in the Los Angeles area has employees who are members of defendant Union.

69. There are in operation at the present time in the Los Angeles area only two processors of yellow grease who make any regular or substantial purchases of restaurant grease from peddlers—B & H Processing Company and Star Grease Company. William Sanders, owner of Star Grease Company, is a member of defendant Union. Henry Cohen, a partner in B & H Processing Company, is a member of defendant Union.

70. From the time it commenced business in July 1958, to the present time, Star Grease Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the filing of the complaint herein, Star has continued to follow this policy and practice.

71. From the fall of 1954 to the present time, B & H Processing Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the complaint was filed herein, B & H consistently refused to purchase grease from [fol. 79] non-union peddlers.

72. Between October 1954 and the present time, defendant Union, as a chartered affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, was subject to the provisions of the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

Conclusions of Law

1. The activities of the defendants and co-conspirators constitute an unreasonable restraint upon foreign trade and commerce in yellow grease.

2. The defendants and co-conspirators have combined and conspired in unreasonable restraint of foreign trade and commerce in yellow grease in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

FINAL JUDGMENT

In accordance with the foregoing findings of fact and conclusions of law, It Is Ordered, Adjudged and Decreed:

I

As used in this Final Judgment:

(a) Restaurant grease means waste grease resulting from the preparation of foods in kitchens of restaurants, hotels, and institutions.

(b) Yellow grease means an inedible grease produced primarily by removal from restaurant grease of most of the moisture and impurities. It usually has a minimum melting point or titer of about 36 degrees centigrade; a yellowish color of about 37 FAS; no more than 2 per cent of moisture, impurities, and unsaponifiables; and a minimum content of about 10 per cent or more of free fatty acids.

(c) Processor means a person engaged in the business of producing yellow grease from restaurant grease.

(d) Peddler, or grease peddler, means a person who is a self-employed entrepreneur engaged for his own account in the business of buying restaurant grease from restaurants, hotels, and institutions, transporting said grease in trucks to the plants of processors, and selling such restaurant grease to said processors.

[fol. 80] (e) Local 626 means defendant Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

(f) Person means any individual, partnership, corporation, association, or other legal entity.

II

(a) The provisions of this Final Judgment applicable to defendant Local 626 shall apply to such defendant, to each of its members, officers, trustees, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(b) The provisions of this Final Judgment applicable to defendants Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis shall apply to each of said defendants, his agent and employees, and to all other persons in active concert or participation with said defendants or any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

Since 1954, defendants Local 626, Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis (hereinafter collectively referred to as the defendants) have engaged and continued to be engaged in a combination and conspiracy among themselves and others to suppress and eliminate competition in the gathering, purchase, sale, and distribution of yellow grease in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

IV

The defendant Local 626 is ordered and directed:

(a) To expel promptly from membership all grease peddlers;

(b) To refuse membership at any time in the future to [fol. 81] any grease peddler;

(c) To expel from membership any member who becomes a grease peddler;

(d) To furnish a copy of this decree to all grease peddlers who are now members of Local 626.

V

Each defendant is enjoined and restrained from:

(a) Entering into, adhering to, maintaining, furthering, or participating in any contract, agreement, understanding, plan, or program with any defendant, processor, peddler, or any other persons:

(1) To limit the number of peddlers who can engage in the gathering, purchase, or sale of restaurant grease;

(2) To allocate among peddlers the restaurants, hotels, or institutions from which restaurant grease may be purchased by peddlers;

(3) To allocate among processors the peddlers from whom processors may purchase restaurant grease;

(4) To allocate among processors the quantities of restaurant grease to be purchased from peddlers;

(5) To prevent processors from buying restaurant grease from peddlers of their own choice or prevent peddlers from selling restaurant grease to processors of their own choice;

(6) To establish, maintain, fix, or determine the prices paid by third persons to restaurants, hotels, and institutions for restaurant grease;

(7) To establish, maintain, fix, or determine the prices for restaurant grease sold to processors by third persons, and the prices paid for restaurant grease by processors to third persons.

(b) Directly or indirectly persuading, inducing, or compelling, or attempting to persuade, induce, or compel any [fol. 82] defendant, processor, peddler, or any other person, by boycott, strikes, or picketing, or by threats thereof, or by any other means, to do or participate in the doing of any of the things set forth in subparagraphs (1) to (7) of subsection (a) in this Section V.

VI

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to a defendant at its or his principal office, subject to any legally recognized privilege, be permitted:

(a) Access during office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of such defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of such defendant, and without restraint or interference, to interview the officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon order of this Court made on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

[fol. 83] VII

Defendant Local 626 is ordered and directed to pay all costs to be taxed in this case.

Wm. M. Byrne, United States District Judge

Dated: July 14, 1961.

Received copy of the within Findings of Fact, Conclusions of Law, and Final Judgment at 8:45 AM o'clock on 7th day of July 1961.

Brundage, Hackler & Flaum, by Richard W. Petherbridge, Attorney for Defendants.

Approved as to Form:

Disapproved as to Form:

Brundage, Hackler & Flaum, by Richard W. Petherbridge, Attorney for Defendants.

[fol. 84] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 26, 1961

I. Notice is hereby given that defendant, Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereby appeals from Paragraph IV (a), (b) and (c) of the Final Judgment entered in this action on July 14, 1961.

This appeal is taken pursuant to 15 U.S.C. §§ 28, 29, and 49 U.S.C. §§ 44, 45.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the clerk of the Supreme Court of the United States and include in said transcript the following:

[fol. 85] 1. Complaint.

2. Answer to Complaint.

3. Stipulation of Facts (dated March 23, 1961).

4. Memorandum of Opinion.

5. Findings of Fact, Conclusions of Law, and Final Judgment.

III. The following questions are presented by this appeal:

1. Is it a proper exercise of the authority of the court in an anti-trust action against a local union and several individual defendants, some of whom are grease peddlers, for engaging in activities resulting in the suppression of competition in the gathering, purchase, sale and distribution of yellow grease, in addition to enjoining all of the defendants from further participation in such illegal activities, to order the local union to expel from membership all grease peddlers?

2. Under such circumstances is it a proper exercise of the authority of the court to order the local union to refuse membership at any time in the future to any grease peddler?

3. Under such circumstances is it a proper exercise of the authority of the court to order the local union to expel from membership any member who becomes a grease peddler?

Dated: This 26th day of July, 1961.

Brundage, Hackler & Flaum, By Charles K. Hackler, Attorneys for Defendant, Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Affidavit of Service (omitted in printing).

[fol. 87] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 88] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[Title omitted]

SUPPLEMENT TO NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 16, 1961

Notice Is Hereby Given that, in addition to the questions set forth in paragraph III of the Notice of Appeal herein, the following questions are presented by this appeal:

1. Do the "divestiture" portions of the Final Judgment [Paragraph IV (a), (b) and (c)] violate the due process guarantees of the Fifth Amendment to the Constitution of the United States in that the International Union, and those grease peddler members of Local 626 who were not named defendants herein, are thereby deprived of contractual property rights in a proceeding to which they were not parties?

2. Do the "divestiture" portions of the Final Judgment deprive the members of Local 626, including those who [fol. 89] are grease peddlers, of the freedom of association guaranteed by the First Amendment to the Constitution of the United States?

Dated this 16th day of August, 1961.

Brundage, Hackler & Flaum, By Charles K. Hackler, Attorneys for Defendant, Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Affidavit of Service (omitted in printing).

[fol. 90] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 91] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

[Title omitted]

STIPULATION FOR AND ENLARGEMENT OF TIME FOR DOCKETING CASE WITH THE SUPREME COURT OF THE UNITED STATES—Filed September 8, 1961

It Is Stipulated and agreed by the undersigned counsel for plaintiff and defendants that the Court may enter an order enlarging the time for docketing the case herein on appeal to the Supreme Court of the United States to and including the 24th day of October, 1961, on the ground that counsel for appellants is otherwise engaged in pending litigation.

Dated at Los Angeles this 8th day of September, 1961.

Charles L. Whittinghill, Maxwell M. Blecher, By Charles L. Whittinghill, Attorneys for Plaintiff.

Brundage, Hackler & Flaum, By Richard W. Petherbridge, Attorneys for Defendants.

It Is So Ordered this 8 day of September, 1961.

Wm. M. Byrne, United States District Judge.

[fol. 92]

SUPREME COURT OF THE UNITED STATES
No. 511, October Term, 1961

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 15, 1962

Appeal from the United States District Court for the Southern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

January 15, 1962

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. [redacted] 138

OCTOBER TERM, 1962

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

JURISDICTIONAL STATEMENT.

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Cases Cited.

Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 812	7, 8
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Louisiana v. NAACP, 6 L. Ed. 2d (Adv.) 301, 304 6
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Timken Roller Bearing Co. v. United States, 341 U. S. 593 2
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United States v. Hutcheson, 312 U. S. 219, 231 8
United States v. National Lead Co., 332 U. S. 319 2

Statutes Cited.

15 U. S. C., Sec. 1 ..... 3, 4
15 U. S. C., Sec. 4 ..... 2, 3
15 U. S. C., Sec. 17 3
15 U. S. C., Sec. 28 2
15 U. S. C., Sec. 29 ..... 2, 3
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29 U. S. C., Sec. 104 ..... 3, 6
29 U. S. C., Sec. 113 (c) 9
29 U. S. C., Sec. 158 (b) 3, 6, 7
29 U. S. C. Sec. 411 (a) (5) 7
49 U. S. C., Sec. 44 2
49 U. S. C., Sec. 45 2

Textbooks Cited.

Aaron, "The Labor-Management Reporting and Dis-closure Act of 1959," 73 Harv. L. Rev. 851, 860-61 7
Hill, "Teamsters and Transportation," American Council on Public Affairs, pp. 178-180 (1942) 10

IN THE

SUPREME COURT OF THE UNITED STATES.

No. .....

OCTOBER TERM, 1961.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the Southern District of California, Central Division, entered on July 14, 1961, requiring the Appellant Union to expel certain of its members and to refuse to readmit such persons to union membership. This statement is submitted to demonstrate the jurisdiction of this Court and the substantial character of the issues involved.

OPINION BELOW.

The opinion below is reported in ... F. Supp. ..., 43 Labor Cases, ¶ 17,085 and is reprinted in Appendix A, *infra*, p. 11. Appendix B, *infra*, p. 30, contains the findings of fact and conclusions of law made by the court below and the judgment entered by the court below.

JURISDICTION.

This civil suit was brought under Section 4 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 4, to restrain certain activities alleged to be in violation of Section 1 of that Act. The judgment of the court below was entered on July 14, 1961, and a notice of appeal filed on July 26, 1961. An order extending Appellants' time for filing a jurisdictional statement to October 24, 1961, was entered on September 8, 1961. A copy of the order extending time for filing the Jurisdictional Statement has been filed with this Court. The jurisdiction of this Court to review the judgment below, by direct appeal, is conferred by 15 U. S. C., Secs. 28 and 29 and 49 U. S. C., Secs. 44 and 45; and such jurisdiction is customarily exercised. *E. g., Timken Roller Bearing Co. v. United States*, 341 U. S. 593; *United States v. National Lead Co.*, 332 U. S. 319.

QUESTIONS INVOLVED.

This is a civil action, under the Sherman Anti-Trust Act, to restrain a labor union from engaging in price fixing and customer allocation practices pursuant to an agreement between the union and a group of its truck-driver members known as peddlers. The owner-driver-peddlers are independent contractors even though their only asset is a small equity in a truck and their only skill is the ability to drive a truck. The court below enjoined not only conduct of the type found to be unlawful, but also entered an order requiring the union to expel all such members and to refrain from admitting such persons to membership in the future. The questions presented are whether those portions of the judgment relating to the expulsion and readmission of owner-driver-peddlers:

1. Unlawfully deny to the Appellant its right to determine the conditions of acquiring and retaining membership

in the Union conferred by the Clayton, Norris-LaGuardia and National Labor Relations Acts.

2. Unlawfully deny to the Appellant and its members rights of due process of law and freedom of association.

STATUTES INVOLVED.

The statutes primarily involved are: The Sherman Anti-Trust Act, Sections 1 and 4, 15 U. S. C., Sections 1 and 4; the Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17 and 29 U. S. C., Section 52; the Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104; and the National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b) (1). These statutory provisions are set forth in Appendix C, *infra*, p. 55.

STATEMENT.

Appellant, Los Angeles Meat and Provision Drivers Union, Local 626, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to as the "Union") is a labor organization with a membership of approximately 2,400 persons (ff. 1)*. Most of the Union's members are truck drivers engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (ff. 1). Between October, 1954, and May, 1959, the period covered by the complaint, there were 35 to 45 owner-driver-peddlers who were members of the Union (ff. 1). Only four of the owner-driver-peddler union members were joined as parties to this proceeding (ff. 3). Appellant Singer, at all times material, was a business representative but not an officer of the Union (ff. 2).

On May 27, 1959, the Justice Department filed a civil complaint alleging that the Union and its owner-driver-

* "ff." refers to the findings of fact made by the court below upon the stipulation of the parties. The findings of fact are set forth in Appendix B, *infra*, p. 30.

peddler members were engaging in conduct which violated Section 1 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 1. The parties entered into detailed factual stipulations in which the Union consented to a finding that price fixing and account allocation activities engaged in by the Union and its owner-driver-peddler members were unlawful (ff. 32, 33, 34, 45, 53-55). The Union does not challenge those portions of the decree which restrain price fixing, account allocation and related conduct.

The owner-driver-peddlers purchase grease* from hotels, restaurants and institutions. The owner-driver-peddler then transports the grease in a truck, which he either owns or rents, to the plant of a processor (ff. 5). Owner-driver-peddlers have no established place of business, no employees and no capital investment except a small equity in a truck (ff. 6). Moreover, the owner-driver-peddlers have no skill or special qualifications except the ability to load, unload and drive a truck (ff. 6). Their earnings consist of the difference between the purchase and sale price of grease reduced by the cost of operating a truck (ff. 6), but they are not considered employees of the processor (ff. 5).

During the 1954-1959 period involved in this case, there were eight processors in Los Angeles County (ff. 9), six of whom acquired all or a substantial part of their grease from owner-driver-peddlers (ff. 10). All of the processors employed members of the Union conceded to be bona fide employees (ff. 68), and four of the processors employed employee-union members to pick-up and transport grease from restaurants and other institutions to the processor's plant (ff. 16).

The judgment entered by the court below contains detailed restraints against price fixing, account allocation,

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* "Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions" (ff. 7).

and related acts (Judgment, par. V). In addition, the judgment confers rights of visitation to insure future compliance (par. VI). The judgment further requires the Union to expel its owner-driver-peddler members and to refuse to admit such persons to union membership in the future (par. IV).

In ordering the union to expel its owner-driver-peddler members, the court below stated that such persons were not a proper subject of unionization in the absence of proof of competition between the peddlers and employee-members of the Union. And, according to the court below, no "competition" exists in this case. A second reason for requiring the expulsion of the owner-driver-peddlers from the Union was the need, envisioned by the court below, to insure competition *among* the owner-driver-peddlers and to prevent future violations. In this regard, the court below thought cases involving divestiture of illegally acquired stock to be apposite.

SUBSTANTIAL ISSUES ARE PRESENTED.

1. The Union consented to a finding that it engaged in conduct proscribed by the Sherman Act and acknowledges the propriety of a restraining order containing detailed prohibitions against that and similar conduct. But the Justice Department urged and the court below held that it is a function of the anti-trust laws to establish and regulate membership qualifications in labor organizations. This radical departure from Congressional warrant gives rise to the central controversy presented by this case and serves to underscore the need to subject the "relief granted by [the] trial court [to] the most careful scrutiny of this Court . . . to make certain that justice has been done." *International Boxing Club v. United States*, 358 U. S. 242, 253. *See also: United States v. Du Pont De Nemours & Co.*, 6 L. Ed. 2d (Adv.) 318, 323-324.

2. The right to form, join and assist labor organizations is a fundamental one which exists independently of legislative enactment. *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *Amalgamated Utility Workers v. Consolidated Edison*, 309 U. S. 261, 263. Since the right involved is the freedom of association, "we deal with a constitutional right . . . included in the bundle of First Amendment rights. . . ." *Louisiana v. NAACP*, 6 L. Ed. 2d (Adv.) 301, 304. Neither the Sherman Act, by its terms, nor any other federal statute purports to "deny to . . . a . . . labor organization the right to determine eligibility to its membership." *Steel v. Louisville & Nashville R. R. Co.*, 323 U. S. 192, 204.

In this case, however, the court below, with singleminded devotion to anti-trust notions, undertook to strip the Union of its owner-driver-peddler members. Thus, for the first time in the long history of anti-trust proceeding against labor unions, this Court has before it an anti-trust injunction which requires a union to expel and refuse readmission to a group of its members.

A union is privileged by both constitutional right and explicit statutory guarantee[1] to decide for itself, free from the interference of the Justice Department, the conditions for membership in the union. Both the National Labor Relations Act, 29 U. S. C., Sec. 141, and the Labor Management Reporting and Disclosure Act, 29 U. S. C., Sec. 401, were carefully limited by the Congress to avoid impinging upon this right.[2] Yet the Justice Department, in

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[1] Section 4 of the Norris La Guardia Act, 29 U. S. C., Sec. 104, singles out for separate condemnation injunctions against "becoming or remaining a member of any labor organization. . . ." See also: Section 8 (b) (1) of the NLRA, 29 U. S. C., Sec. 158 (b) (1), quoted in note 2, *infra*.

[2] For example, the NLRA declares that nothing in Section 8 (b) (1) shall "impair the right of a labor organization to prescribe

this case, has utilized the Sherman Act, a statute which contains no reference to labor unions or union membership, as a device for accomplishing precisely that which the Congress has consciously refrained from doing in statutes dealing particularly with labor unions.[3]

Underlying this attempt is the notion that a union's right to determine its own structure and membership is somehow forfeit if the union engages in conduct violating the anti-trust laws, at least insofar as the members involved in the violation are concerned. In short, it is the assumption of the Justice Department that the federal courts may, upon proof of anti-trust violation, once again govern by injunction unfettered by the Clayton, Norris-LaGuardia and National Labor Relations Acts. Such a notion is a war with common sense, the hard-won declarations of Congressional policy embodied in these Acts, and with this Court's decision in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812.

In *Allen Bradley* a finding of unlawful conduct under the anti-trust laws was affirmed; but those portions of the decree which barred the Union "from doing the very things that the Clayton Act specifically permits union to do" were set aside. 325 U. S. at 812. This Court's opinion and mandate in *Allen Bradley* make it patently clear that in cases in which a union is found to have violated

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its own rules with respect to the acquisition or retention of membership therein. . . ." 29 U. S. C., Sec. 158 (b) (1).

Amendments to the LMRDA which would have established federal statutory regulation of unions with respect to admission to membership were defeated. See: Aaron, "The Labor-Management Reporting and Disclosure Act of 1959," 73 Harv. L. Rev. 851, 860-861.

One may fairly ask what becomes of the specific requirement for a "full and fair hearing" imposed by Section 101 (a) (5) of the LMRDA, 29 U. S. C., Sec. 411 (a) (5), as a condition of expelling union members, if the decree below were upheld.

[3] The court below, contrary to the teaching of *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409, has created "new duties, prescription of which is the function of Congress."

the anti-trust laws, the relief to be granted is nonetheless subject to the express limitations embodied in the Clayton Act and the Norris-LaGuardia Acts. If the Justice Department's theory in this case had been applied to the facts in *Allen Bradley*, it presumably would urge the "dissolution" of Local 3 or at least the "divestiture" of *all*, not just its illegal, contractual relations with employer members of the conspiracy.

As this Court observed in *United States v. Hutcheson*, 312 U. S. 219, 231, the Sherman, Clayton and Norris-LaGuardia Acts must be read "as a harmonizing text of outlawry of labor conduct." There are no legislative mandates comparable to the Clayton and Norris-LaGuardia Acts restricting the relief to be granted in cases of illegal stock acquisitions or other monopolistic commercial practices. For this reason, alone, cases dealing with divestiture of illegally acquired stock, relied upon by the court below, have no legitimate role to play. Even in the darkest days of labor law it was not seriously contended that a share of General Motors common stock held by a company, controlled by the Du Pont family, is the legal equivalent of a union card held by a man whose only asset is a small equity in a truck and whose only skill is the ability to drive his truck.[4] To state the comparison is, we submit, to demonstrate that it is untenable. The portions of the decree, entered by the court below, requiring the forfeiture and denial of union membership to owner-driver-peddlers is an obvious attempt to "impose penalties in the guise of preventing future violations." *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409.

3. In determining whether the peddlers "were a proper subject of unionization," the court below found it neces-

[4] Yet the reliance of the Justice Department and the court below upon divestiture precedent can be viewed only as an indication that in their judgment such a comparison can, and in this case must, be made.

sary to consider the unbroken course of decision, in this Court, sustaining a union's right to organize vendors, peddlers and owner-drivers.[5] These cases were dismissed with the legally and factually unsupportable assertion that there was in this case no "competition" between the owner-driver-peddlers and employee members of the Union.

In concluding that "no competition" existed, the court below ignored both the record in this case and the realities of industrial life. Even without the guidance of the Norris-LaGuardia Act,[6] this Court recognized that employees "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri-City Council*, 257 U. S. 184, 209. *See also: Thornhill v. Alabama*, 310 U. S. 88, 103 (1940); *Consolidated Terminal Corp. v. Drivers, Chauffeurs & Helpers Local Union 639*, 33 F. Supp. 645, 647-648 (D. C. D. C. 1940). Nor will it suffice to say that since peddlers do not work for "wages", the Union has no legitimate interest in their working conditions. The presence of vendors, peddlers and owner-operators in the transportation field poses an ever-present threat that jobs of employee-members will be removed from the coverage of collective bargaining agreements and transferred to individuals willing to work for less money, longer hours without the protection of workmen's compensation, unemployment compensation and other social legislation. *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 98; *Local 24 v. Oliver*, 358 U. S. 283, 293-295. *See:* Hill, "Teamsters and Trans-

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[5] *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91; *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769; *Local 24 v. Oliver*, 358 U. S. 238.

[6] Under the Norris-LaGuardia Act a labor dispute exists, independently of an employee-member controversy (Sec. 13 (c), 29 U. S. C. 113 (c)), if "persons," not employees, having a "direct or indirect" interest in the same industry are "interested" in the dispute (Sec. 13 (c), 29 U. S. C., Sec. 113 (c)). A broader statutory coverage would be exceedingly difficult to draft.

portation," American Council on Public Affairs, pp. 178-180 (1942). That such a potential exists in this case is conclusively established by the fact that each of the eight processors involved in this case has employees who are members of the Union (ff. 68), and four have employees engaged in the transportation of grease from restaurants and other institutions to the processors' plants (ff. 16).

4. Only four of the 35 to 45 peddlers, subject to expulsion under the decree below, are parties to this proceeding (ff. 1, 3): The contractual (Cf. *International Association of Machinists v. Gonzales*, 356 U. S. 617, 618-619) and statutorily protected (LMRDA, Sec. 101 (a) (5), 29 U. S. C., Sec. 411 (a) (5)) interest of the owner-driver-peddlers in union membership cannot be denied to them, consistently with the requirements of due process of law, unless they are accorded an opportunity to be heard. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232-233; *United States v. Du Pont De Nemours & Co.*, 6 L. Ed. 2d (Adv.) 318, 330.

For the foregoing reasons, it is submitted that the questions presented are substantial.

Respectfully submitted.

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APPENDIX "A".

UNITED STATES DISTRICT COURT
Southern District of California,
Central Division.

United States of America, Plaintiff, vs. Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis, Defendants.	No. 545-59 WB

MEMORANDUM OF DECISION.

The United States filed its complaint under Section 4 of the Sherman Act (15 U. S. C. A., 4) seeking to prevent and restrain a continuing violation by defendants of Section 1 of the Act (15 U. S. C. A., 1).

The defendant Los Angeles Meat and Provision Drivers Union, Local 626, is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and has its principal place of business in Los Angeles, California. Defendant Meyer Singer is business representative of the Union who actively managed and coordinated the affairs and acts of the grease peddler members of the Union. Defendants Lee Taylor, Hubert Brandt, Walter Klein and Harold Carlis are grease peddler members of the Union.

"Grease peddlers" are defined as independent businessmen who are in the business of buying, transporting and selling waste restaurant grease for their own account. These self-employed peddlers have no established place of business; no employees, except an occasional leader; no capital investment, except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. Grease peddlers drive from restaurant to restaurant, picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. *Their earnings represent* the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

The processing companies who buy the waste restaurant grease from the peddlers then convert it into yellow grease, which they sell either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries. Therefore, any restraint on or disruption in, or interference with, the purchase of waste restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of waste grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce.

Prior to 1954, the grease peddlers of Los Angeles were not members of, or in any way affiliated with, any labor union. However, in the fall of 1954, the defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership, Union representatives, including defendant Singer, proposed the following plan: The Union would increase the profits of the grease peddlers by increasing the margin between the prices paid

by said peddlers for restaurant grease and the prices they would be paid by processors; grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; the processors would be required to deal only with those grease peddlers who were members in good standing of the Union; and unless grease peddlers became members of the Union, they would have no place to sell their restaurant grease and would be forced out of business.

In October 1954, a majority of grease peddlers in Los Angeles County, including defendants Taylor, Brandt, Klein and Carlis, joined the defendant Union, thereby agreeing to make operative the plan outlined by defendant Singer and other Union representatives.

During the period between October 1954 and May 27, 1959 (the period covered by the complaint), there were in Los Angeles County about 40 to 50 grease peddlers, 35 to 45 of whom were members of defendant Union. After April 1955, these grease peddlers held their membership in a subdivision of the Union known as Local 626-B.

During this same period, there were in Los Angeles County eight processors of yellow grease, six of which acquired all or most of their waste grease from grease peddlers.

The parties filed a stipulation providing that seventy-two facts set forth therein were admitted, required no proof and should be accepted by the court as being true for purposes of the instant action. These facts relate in detail the plan and the activities of the defendants, and support fully the allegations of the complaint that defendants were guilty of price-fixing and elimination of competition in the gathering and sale of waste grease in the Los Angeles area.

It is further stipulated:

1. That the acts of defendants and their co-conspirators constitute a direct, substantial and unreasonable restraint upon foreign trade and commerce in yellow grease;

2. That defendants unlawfully combined and conspired in unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

3. That the court may enter judgment that defendants have violated Section 1 of the Sherman Act as charged in the complaint.

4. That plaintiff is entitled to injunctive relief perpetually enjoining defendants from participating, and from forcing the processors to participate, in any plan the purpose and effect of which is to fix prices and eliminate competition in the peddlers' gathering grease and selling it to processors.

The sole remaining issue in the case is whether the decree should include a provision that the Union be ordered to terminate the membership of peddlers and be perpetually enjoined from accepting peddlers as members, unless they become bona fide employees, and that the peddler defendants be enjoined from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Defendants' first argument in opposition to the ouster of peddlers from defendant Union, is that "membership of peddlers in a union does not transform the union into an illegal combination in restraint of trade under the antitrust laws." The proposition thus stated appears to be pointless; inasmuch as plaintiff and defendants have stipulated to the fact that the defendants (including the Union and its peddler members) "*unlawfully combined and conspired in unreasonable restraint of foreign trade*

and commerce in yellow grease in violation of Section 1 of the Sherman Act" (italics added).

The issue at hand is whether, under the facts as stipulated, the court may properly enter a decree compelling the defendant Union to oust its peddler members. Defendants cite many Supreme Court cases which they claim condone a union's taking independent contractors into membership. Therefore, what defendants are presumably arguing is that since there is nothing illegal per se about an independent contractor's joining a Union, this court has no power to compel the expulsion of defendant peddlers from defendant Union.

It may be noted at the outset that the precise issue of whether an independent contractor may properly join a union, appears never to have been before the Supreme Court. At any rate, this issue was not decided in any of the cases cited by defendants in their brief. A reading of these cases discloses that only in the most indirect fashion did the court indicate its views as to the propriety of extending union membership to independent contractors, jobbers, vendors, or the like.

For example, in *Bakery Drivers Local v. Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1941), in an effort to compel peddlers (independent jobbers) to join the bakery drivers' union, members of that union had peacefully picketed bakeries from which peddlers obtained their goods, carrying placards with the peddlers' names and a true statement of the union's grievances. The Supreme Court held that a state court injunction against such picketing was an unconstitutional invasion of the right of free speech.

From the facts and the decision of the *Bakery Drivers* case, it may be obliquely inferred that peddlers can join, or properly be coerced to join, a union when they are en-

gaged in the same kind of work as union members and *compete* with the members, thus lowering the working conditions and wages of the latter.

Another case cited by defendants is *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63 (1940). Here the Supreme Court held there existed a "labor dispute" within the meaning of the Norris-La Guardia Act, and the requirements of this Act not having been met, the District Court had no jurisdiction to grant an injunction, notwithstanding that the suit was based upon alleged violation of the Sherman Act. The *Milk Wagon Drivers'* court did not pass even indirectly upon the question of whether the picketing had a legitimate objective. The only point of the case for the purpose of this discussion is that it furnishes another instance of a union's attempt to compel the joinder of self-employed persons whose activities tend in some manner to compete with the functions of union members, thus affecting unfavorably the wages and employment of the union members.

Upon the basis of the *Bakery Drivers* and *Milk Wagon Drivers'* cases, supra, it may be said that the Supreme Court apparently and impliedly sanctions the union's coercing the joinder of independent contractors, jobbers or vendors (1) if these groups compete with union members by doing the same or similar work; and (2) if the object of having these groups join the union is to eliminate their unfair competition with union members, and the consequent lowering of the wages and working conditions of union members.

In the instant case the facts contained in the stipulation show that neither of these conditions for the proper joinder of independent contractors with a labor union is present.

The members of defendant Union (Los Angeles Meat and Provision Drivers Union, Local 626) are truck drivers en-

gaged in loading, unloading and transporting meat and meat products for packing houses and related employers. Every processor of yellow grease in the Los Angeles area has employees who are members of the defendant Union.

The grease peddler defendants are independent, self employed businessmen who purchase waste grease from restaurants and other institutions, and then transport the grease in their own trucks to the processing companies, to whom they sell the grease.

These facts do not show that there is competition between the peddlers and the union employees of the processors. On the contrary, there is no competition between these groups because each is engaged in a different line of work, the peddlers buying grease, transporting and selling it to the processors, and the union members performing other functions for their employers (the processors).

The defendant Union solicited the membership of the peddler defendants not for the purpose of raising the wages and working conditions of the peddlers and the union employees of the processors, but for the sole purpose of increasing the income of the peddlers alone, and enabling the Union, the peddlers and the processors to control the business of purchasing and selling waste grease in the Los Angeles area.

In *United States v. Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227 (S. D. N. Y., 1960), which is quite similar on its facts to the instant case, the court concluded that the jobbers (independent businessmen) were not a proper subject of unionization because, regardless of how the jobbers were characterized, there was no competition between them and the Union employees.

The *Fish Smokers* case involved a suit under Section 4 of the Sherman Act to prevent and restrain continuing violations by defendants of Section 1 of the Act. There

the defendant Union had a total membership of about 700, of which about 75 were jobbers (the counterpart of the peddlers here) who purchased fish from smokehouses for resale to customers. The remaining members of the defendant Union were true employees, a number of whom performed the same function in their capacity as employees of the employer smokehouses, i. e., the employees delivered the fish from the smokehouses to wholesale or retail outlets. The jobbers had joined the Union because of an agreement between the Union and the smokehouses providing that the latter would not sell fish to jobbers who were not Union members. This agreement the Union enforced by threats of strikes against smokehouses refusing to boycott non Union jobbers.

Under these facts, the court concluded that the jobbers were not properly Union members, stating at pages 234 and 235 of 183 F. Supp.:

> "*If the work and functions they* (the jobbers) *performed in the smoked fish industry conflicted with or competed with the work and functions performed by the chauffeur employees of the smokehouses, and affected the hours, working conditions and wages of these men, then regardless of what they called themselves, the jobbers would lawfully be forced into the Union.* However, it is evident that the mere fact that the jobbers worked long hours and at times earned less than the chauffeur employees had no effect on the working conditions or wages of the chauffeurs—other than the inevitable causal effect which demand or lack of demand of smoked fish by the jobbers and their customers would have on its production by the smokehouses and their employees. There was no competition in any respect between the chauffeurs and the jobbers—if any, it was between the smokehouses who sold retail and the jobbers. *Although the physical aspect of the*

work of these two groups is similar, 'the economic and social difference between them lies in the method of compensation and return for their toil.' People v. Distributors Division, 169 Misc. 255, 7 N. Y. S. 2d 185, 187. (Italics added.)

"The demands which were made by the Union of the smokehouses on behalf of the jobbers in 1954 — excepting perhaps that concerning the welfare and pension funds—were purely the demands and requirements of an independent business man having to do with extension of credit, price and discrimination, and not with wages, working conditions or hours of employees. * * *"

Thus, the rationale of the court in the *Fish Smokers* case, supra, appears to substantiate the inference drawn from the two Supreme Court cases discussed earlier, namely, that the membership of so-called "independent contractors" in a labor union is not proper unless the purpose of the membership is to secure better wages and working conditions for all union members through the elimination of competition caused by the fact that the independent contractor and the union employees perform the same function.

However, the true significance of the *Fish Smokers* case is not that it merely states the circumstances under which independent contractors may not properly be forced into a union. Rather, the real importance of this decision lies in the fact that it indicates the result of such a misalliance, which is that the union and the independent contractors have put together a combination in restraint of trade, in violation of the Sherman Act. The court makes this clear by stating at page 229 of 183 F. Supp.:

"There is one principal issue raised by the pleadings and that is whether the jobbers are independent business men as plaintiff maintains and therefore not

a proper subject of unionization; if they are, then it follows that the defendants' alleged activities in forcing them into the Union and into agreements to allocate their customers is an act in restraint of trade within the strictures of the antitrust laws, Allen Bradley Co. v. Local Union No. 3, 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939. If, however, these jobbers are a labor group as defendants contend, then their activities are protected by the Clayton and Norris-La Guardia Acts and under Milk Wagon Drivers' Union, etc., v. Lake Valley Farm Products, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63."

and again at page 234:

"But whether such agreement among the smokehouses, the Union and the jobbers was simply the usual closed shop labor agreement in order 'to see that each of them (the Joiber) earns a living, and that not one guy gets it all * * * and that everyone gets an even break,' as defendant argues, and consequently lawful under the Milk Wagon Drivers' Union decision, or whether it was really a conspiracy masquerading as a labor agreement in order to restrain competition between business men as in Allen Bradley Co. v. Local Union No. 3, supra, * * *, depends on whether the jobbers, although so-called independent business men, were really a labor group."

Defendant peddlers and the defendant Union's employees in this case did not compete with each other. Therefore, the peddlers are not a labor group and are not the proper subject of unionization. Moreover, in this case the peddlers were taken into the defendant Union for the purpose of raising their income and enabling the Union, the peddlers and the processors to put together a combination to control the business of buying and selling waste grease in the Los Angeles area, thereby restraining foreign

commerce in yellow grease in violation of the Sherman Act.

Defendants contend that it is not possible to grant the relief sought by plaintiff because of Section 6 of the Clayton Act [15 U. S. C. A., § 17][1] and Section 4 (b) of the Norris-La Guardia Act [29 U. S. C. A., § 104 (b)].[2]

It has long been settled law that neither the Clayton Act nor the Norris-LaGuardia Act permits labor unions to combine with other, non-labor groups for the purpose of monopolizing trade in violation of the Sherman Act. *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939 (1945); *Columbia River Packers Ass'n v. Hinton*, 315 U. S. 143, 62 S. Ct. 520, 86 L. Ed. 750 (1942).

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1 Title 15 U. S. C. A.

"§ 17. Antitrust laws not applicable to labor organizations.

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit; or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

2 Title 29, U. S. C. A.

"§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"* * *

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as described in section 103 of this title;"

In *Allen Bradley Co. v. Local Union No. 3*, supra, the Electrical Workers Union and its members, prompted by the desire to get and hold jobs for themselves at good wages and under high working standards, combined with employers and manufacturers of electrical equipment to restrain competition in, and to monopolize the marketing of, electrical equipment. The Supreme Court held that the Union's activities constituted a violation of the Sherman Act, despite the provisions of the Clayton and Norris-LaGuardia Acts. In this regard, the court made the following pertinent observations at pages 809 and 810 of 325 U. S.:

> "* * * Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one element in a far larger program in which the contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level. * * * [W]*hen the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts* (italics added).
>
> "It must be remembered that the exemptions granted the unions were special exceptions to a gen-

eral legislative plan. The primary objective of all the Anti-trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. *For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves.* Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. *Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act*" (italics added).

Columbia River Packers Ass'n v. Hinton, 315 U. S. 143, 62 S. Ct. 520, 86 L. Ed. 750 (1942) is another instance where the Supreme Court held that injunctive relief was not barred by the Norris-La Guardia Act, when a violation of the Sherman Act was involved.

In the instant case, Section 6 of the Clayton Act (15 U. S. C. A. § 17, supra) does not sanction the alliance of the peddler defendants and the defendant Union, because such alliance was not formed for the purpose of "mutual help", but rather for the purpose of enabling the peddlers, the Union and the processors together to obtain control of the waste grease trade in the Los Angeles area, with

consequent restrictions upon the free flow of yellow grease in foreign commerce. As stated in the *Allen Bradley* case, supra, Congress did not intend to permit violations of the Sherman Act to go unpunished merely because a labor union is one of the parties to the unlawful combination condemned by that Act.

Nor does the Norris-La Guardia Act furnish refuge for the defendants. The strikes and picketing here involved are not "labor disputes" within the meaning of the Act: for these disputes grew out of the refusal of some of the processors to buy waste grease only from Union peddlers, and in no way related to the improvement of wages or working conditions of the Union members. The instant case is clearly parallel to the *Columbia Packers* case, supra, in that the disputes centered about the processors' purchase of a commodity (waste grease), and in no wise related to the employer-employee relationship. Therefore, Section 4 (b) of the Norris-La Guardia Act (29 U. S. C. A., § 104 (b); supra), does not prohibit the issuance of a decree which would terminate the membership of grease peddlers in defendant Union.

Defendants assert that this court cannot frame a decree compelling defendant Union to oust its grease peddler members, because such a decree would violate due process by abrogating the contract rights of those who are not parties to the within proceeding.

Defendants' argument runs thus: The defendant Union is affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen. Both the defendant Union and other unions affiliated with the International Brotherhood, have peddler members. Since neither the International Brotherhood nor its other affiliated unions are parties to this action, a decree of this court ordering the ouster of grease peddlers from the defendant Union, would violate due process by abrogating the

contracts between the absent unions and their peddler members.

To state this argument is to refute it; for how can a decree ordering the defendant Union to expel its grease peddler members, possibly affect the contracts between other unions in the International Brotherhood and their peddler members?

In support of their contention, defendants cite *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126 (1938) and *N. L. R. B. v. Sterling Electric Motors*, 112 F. 2d 63 (9th Cir., 1940). In both of these cases the issue under consideration was whether the National Labor Relations Board had jurisdiction to enter orders affecting vital rights of union members without first giving the union notice or an opportunity to be heard.

This issue is not pertinent in the instant case; for here, the decree terminating the peddlers' membership in the Union would be rendered by a court of the United States and not by an administrative agency, such as the National Labor Relations Board. Furthermore, such a decree would be rendered only after having given the interested parties (Local Union 626, including its grease peddler members) a full hearing. Surely it cannot be seriously contended that the International Brotherhood and its other affiliated unions are "interested parties" to a decree which would terminate only the membership of grease peddlers in Local 626, and would in nowise affect the membership of other peddlers in Local 626, or of grease peddlers or any species of peddlers in any other union affiliated with the International Brotherhood.

The mandatory injunction sought by plaintiff would embody a provision that the Union be ordered to terminate the membership of peddlers in said Union and be perpetually enjoined from accepting peddlers as members thereof, unless they become bona fide employees.

Defendants argue that such a mandatory provision is too vague and broad because it would expel from defendant Union not only the 30 or 40 grease peddler members, but in addition all of the Union's 500 or 600 peddler members.

The term "peddlers" as used throughout this action is defined by sub-paragraph 15, Paragraph IV of the complaint (page 3) as "persons who are self-employed entrepreneurs engaged in the business of buying and selling restaurant grease for their own account from restaurants, hotels, and institutions, transporting said grease in trucks owned or operated by themselves to the plants of processors, and selling such restaurant grease to said processors."

Such a definition certainly excludes all peddler members of defendant Union who deal in any commodity other than waste restaurant grease. Therefore, a decree compelling defendant Union to oust peddlers from its ranks would not be too vague or too broad because it would not affect the membership of any but the *grease* peddlers, whose activities as Union members are stipulated to have contributed to the violation of Section 1 of the Sherman Act.

However, any remaining doubt as to which Union members would be reached by the mandatory injunction, would be quickly dispelled simply by inserting the adjective "grease" before the noun "peddlers" in the final form of the injunction.

Defendants next argue that the proposed mandatory injunction is punitive because the expulsion of grease peddlers from defendant Union is not necessary in order to insure against possible future violations of the Sherman Act by defendants.

In antitrust cases, it is the duty of the court to frame its decree so as to suppress the unlawful practices and to

take such reasonable measures as will preclude their revival. *United States v. Crescent Amusement Co.*, 323 U. S. 173, 65 S. Ct. 254, 89 L. Ed. 160 (1944); *Ethyl Gasoline Corp. v. United States*, 309 U. S. 436, 60 S. Ct. 618, 84 L. Ed. 852 (1940).

Accordingly, in recent years the Supreme Court has, upon at least three occasions, approved antitrust decrees providing for dissolution or divestiture in order to put an end to combinations whose activities violated the Sherman Act. *International Boxing Club v. United States*, 358 U. S. 242, 79 S. Ct. 245, 3 L. Ed. 2d 270 (1959); *Schine Theatres v. United States*, 334 U. S. 110, 68 S. Ct. 947, 92 L. Ed. 1245 (1948); *United States v. Crescent Amusement Co.*, 323 U. S. 173, 65 S. Ct. 254, 89 L. Ed. 160 (1944).

In *International Boxing Club v. United States*, supra, the District Court found, as the Government had charged, that defendants had violated §§ 1 and 2 of the Sherman Act by conspiring to restrain interstate trade and commerce in, and, by monopolizing, the promotion, broadcasting and televising of world championship boxing contests. After further hearings on the nature and extent of the relief necessary to protect the public interest, the District Court entered a final judgment dissolving the international boxing clubs, directing the individual defendants to divest themselves of their stock in Madison Square Garden, and granting injunctive relief designed to open up the market in the business of promoting professional world championship boxing matches.

The Supreme Court affirmed the judgment, holding that the relief granted was not beyond the allowable discretion of the District Court.

In United States v. Crescent Amusement Co., supra, the United States brought civil suit against nine affiliated

companies operating motion picture theaters throughout five States, and against eight major distributors of motion pictures, charging them with conspiracy to restrain interstate trade and commerce in motion picture films and to monopolize the exhibition of films in violation of §§ 1 and 2 of the Sherman Act. The District Court found that certain of the defendants had violated the Act, and entered a decree which required, among other things, that the corporate exhibitors divest themselves of ownership of stock or any other interest in any other corporate defendant, and that certain corporate officers resign from their positions. The Supreme Court affirmed the divestiture and resignation provisions of the decree.

In the instant case, the stipulated facts clearly show that before the grease peddlers joined the defendant Union, there was no suppression of competition among them, and that only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition in the purchase and sale of waste grease, and to drive several processors out of business.

As long as this association of the peddlers and the Union continues, there is danger that their combined activities will be revived and that further suppression of competition in the yellow grease industry will result. To borrow the language of the Supreme Court in the *Crescent Amusement Co.* case, supra, "The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future."

Therefore, far from being punitive, a decree terminating the membership of the grease peddlers in defendant Union appears to be the most effective, if not the only means of preventing a recurrence of defendants' unlawful activities.

The decree shall include a provision ordering defendant Union to terminate the membership of its grease peddler members, and perpetually enjoining the Union from accepting grease peddlers as members unless they become bona fide employees. It shall also enjoin the peddler defendants from holding membership in and participating in the affairs of the Union, unless they become bona fide employees.

Counsel for plaintiffs is directed to prepare, serve and lodge findings and judgment in accordance with local rule 7.

Dated June 30, 1961.

Wm. M. Byrne,
United States District Judge

APPENDIX "B".

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United States District Court,
Southern District of California,
Central Division.

United States of America, Plaintiff, v. Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America; Meyer Singer; Lee Taylor; Hubert Brandt; Walter Klein; and Harold Carlis, Defendants.	Civil Action No. 515-59-WB.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL JUDGMENT.

Findings of Fact.

1. Defendant Los Angeles Meat and Provision Drivers Union, Local 626, transacts business and is found within the Central Division of the Southern District of California. It is a voluntary unincorporated labor organiza-

tion affiliated with and chartered by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, composed of some 2,400 members, most of whom were and are truck drivers engaged in loading, unloading, and transporting meat and meat products for packing houses and related employers. Between October 1954 and May 27, 1959 (the period covered by the complaint herein), from about 35 to about 45 grease peddlers were members of said defendant Union, and after April 1955, they held their membership in a subdivision within said defendant Union known as Local 626-B.

2. Defendant Singer, during the same period, was employed as a business representative of defendant Union. He is not and has not been an officer or an elected official, or executive board member, of defendant Union.

3. Defendants Taylor, Braudt, Klein and Carlis, during said period from October 19, 1954, to May 27, 1959, were grease peddler members of defendant Union.

4. Throughout the period from October, 1954, to May, 1959, inclusive, A. J. Menard was secretary-treasurer of defendant Union, and Charles Rico and Mike Granciel were employed by defendant Union in the capacity of business representatives.

5. During the 1954-1959 period there were in Los Angeles County, California, about 40 to 50 grease peddlers. A grease peddler is a man who purchases restaurant grease primarily from hotels, restaurants and institutions, transports said grease in a truck owned or rented by said grease peddler from the places where he buys the grease to the plant of a grease processor, and sells said grease to said processor. Grease peddlers are independent business men who are engaged in the business of buying, transporting and selling restaurant grease for their own account. They are not employees of the grease processors.

6. These self-employed peddlers have no established places of business, no employees, except an occasional loader, no capital investment except a small equity in a truck, no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck.

7. Yellow grease is inedible grease produced primarily by removal of most of the water and solid impurities from restaurant grease. Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions.

8. The process by which restaurant grease is converted into yellow grease involves the heating of the restaurant grease to a fluid form, and the extraction therefrom of most of the moisture and solid impurities by straining, settling, evaporation, or centrifuging; or a combination thereof. Restaurant grease is customarily converted into yellow grease on the same day it is delivered to a processing plant, or within twenty-four hours. The yellow grease is usually shipped from the processing plant to buyers thereof as soon as sufficient quantity is accumulated to fill a tank truck.

9. During part or all of the period between 1954 and 1959 there were in Los Angeles County, California, eight companies engaged in the production of yellow grease.

10. Six of these producers of yellow grease, hereinafter referred to as processors, acquired from grease peddlers all, or a substantial part, of the restaurant grease from which their yellow grease was made.

11. The names of these six processors and the periods of time in which they produced yellow grease are as follows:

B & H Processing Company	1954-1959
Washington Rendering Company	1954-1959
Peterson Manufacturing Co.	1954-1959
Allied Grease & Tallow Co.	1954-1956
Star Grease Company	July 1958-1959
Harbor Industrial Sales	Dec. 1955-April 1956

12. The combination and conspiracy alleged in the complaint primarily involved and directly affected foreign trade and commerce in yellow grease produced by the six processors named in paragraph 11 hereof.

13. B & H, Allied, Star and Harbor Industrial Sales purchased from grease peddlers practically all of the restaurant grease used by them in the production of yellow grease. Washington bought from grease peddlers about four-fifths of the restaurant grease used in its production of yellow grease. Peterson, from May, 1956, to August, 1958, purchased from grease peddlers about half of the restaurant grease used in its production of yellow grease. The remainder of the restaurant grease used by Washington and Peterson was purchased directly by them from hotels, restaurants and institutions.

14. The remaining two producers of yellow grease, who operated throughout the 1954-1959 period, were Baker Rendering Company and Western Tallow Processors. They made few, if any, purchases of restaurant grease from grease peddlers and purchased directly from restaurants, hotels and institutions substantially all of the restaurant grease used in their production of yellow grease.

15. Baker, Western Tallow and Peterson, in addition to the production of yellow grease, also collected and processed suet and packing and poultry house by-products into

tallows and fertilizers. Washington also collected and processed poultry by-products into animal feeds.

16. For many years Baker, Western Tallow, Peterson and, to a lesser extent, Washington used the services of employee-truck driver members of defendant Union under union contracts, to pick up and transport the restaurant grease and other meat waste purchased by them directly from hotels, restaurants and institutions. Such purchases and collections were usually made from larger establishments, and grease peddlers usually acquired restaurant grease from smaller establishments and other sources where the supply of restaurant grease was relatively small or irregular in availability.

17. The processors usually sell yellow grease under contracts calling for deliveries of specified quantities on future dates, from 30 to 60 days after the execution of the contracts. The processors then purchase restaurant grease in order to produce the yellow grease they have already contracted to sell and deliver.

18. A substantial part of the yellow grease produced by those processors who purchased restaurant grease from grease peddlers was sold by said processors either directly to buyers in foreign countries or to buyers in California for shipment to foreign countries.

19. A substantial amount of yellow grease produced by Peterson was sold and shipped by Peterson directly to buyers in foreign countries. A substantial amount of yellow grease produced by Washington, B & H, Allied, Star, and Harbor Industrial Sales was sold to Baker Rendering Company and Pacific Vegetable Oil Corporation, and nearly all of the yellow grease so sold to those companies was sold and shipped by them to buyers in foreign countries without further processing or change in composition or form. The yellow grease so purchased by Baker and

Pacific Vegetable Oil was purchased with intent to use said yellow grease in filling orders from foreign countries, and was in fact so used.

20. Nearly all yellow grease sold to Baker Rendering Company and to Pacific Vegetable Oil Corporation is delivered by the processors by tank trucks to storage tanks of the buyers located on piers in the Wilmington or Long Beach harbors. The yellow grease so delivered is transferred from said storage tanks into ships for transportation to foreign countries as soon as sufficient quantities are accumulated to fill orders from foreign buyers. The yellow grease so shipped to foreign countries undergoes no processing or change in form or composition after delivery at the piers, except sufficient heating to facilitate its transfer from storage tanks to ships.

21. Within the period from January, 1957, to February, 1959, Washington, B & H, Star, and Peterson produced about 27,000,000 pounds of yellow grease, of which more than 10,000,000 pounds were sold and shipped in foreign commerce. In addition, substantial amounts of yellow grease were produced by Baker and Western Tallow Processors.

22. Within said period, Washington, B & H, Star, and Peterson purchased from grease peddlers over 23,000,000 pounds of restaurant grease, exclusive of the amount of restaurant grease purchased by Peterson from peddlers in 1957, the amount of which is unknown. In addition, substantial amounts of restaurant grease were acquired by Baker, Western Tallow Processors, Peterson, and Washington directly from hotels, restaurants, and institutions through employee-drivers.

23. The purchase, transportation, and sale of restaurant grease by peddlers, the production of yellow grease by processors from restaurant grease purchased by them from

peddlers, and the sale of said yellow grease for shipment in foreign commerce, are integral and essential parts of the flow of yellow grease in foreign commerce. Any restraint on or disruption in, or interference with, the purchase of restaurant grease by peddlers and its sales to processors, and any suppression or elimination of competition in the purchase and sale of restaurant grease by peddlers, and the purchase of restaurant grease by processors from peddlers, necessarily and directly restrains and affects the flow of yellow grease in foreign commerce. Any restraint upon, or interruption of or interference with the purchase of restaurant grease from peddlers by processors, or the delivery of restaurant grease by peddlers to processors, necessarily directly restrains and affects the production of yellow grease by said processors and its flow in foreign commerce.

24. Beginning in the fall of 1954 and continuing thereafter to and including the month of May, 1959, defendant Union, certain of its officers and employees, including defendant Singer, a majority of the grease peddlers in Los Angeles County, California, including defendants Taylor, Brandt, and Klein, and certain processors, all engaged in a combination and conspiracy to suppress and eliminate competition among and between grease peddlers in the purchase and resale of restaurant grease, and to suppress and eliminate competition among and between processors in the purchase of restaurant grease from peddlers.

25. In the years 1952 to 1954, the level of prices paid to peddlers by processors for restaurant grease, and the prices received by processors for yellow grease, had fallen to less than half of the prices that had prevailed for several preceding years. The incomes of peddlers were substantially reduced, and as a consequence, peddlers sought to increase their volume of grease to maintain their incomes. This led to intensive competition among peddlers,

both as to prices offered to hotels and restaurants, and attempts of many peddlers to take over the grease producing accounts or "stops" of other peddlers.

26. In or about the early fall of 1954, defendant Singer, a business agent of defendant Union, and certain grease peddlers, caused most of the grease peddlers in Los Angeles County to become members of defendant Union. In soliciting their membership in said union, representatives of the union, including defendant Singer, proposed the following general plan or program: The union would increase the profits of the grease peddlers by increasing the margin between the prices paid by said peddlers for restaurant grease and the prices they would be paid by processors; that grease peddlers would be prevented from soliciting or buying grease from the accounts of other peddlers; that the processors would be required to deal only with those grease peddlers who were members in good standing in the union; and that unless grease peddlers became members of the union, they would have no place to sell their restaurant grease and would be forced out of business.

27. At a meeting of about ten peddlers in October, 1954, Singer urged the peddlers to become members of defendant Union. He said that the grease buyers had organized in New York City and that routes had been assigned among the peddlers so that each one had his own route, competition for accounts had been eliminated, and each peddler could reduce the price he paid for grease without fear that his account would be taken over by another peddler. Singer said that if the peddlers would join defendant Union, the same arrangement would be worked out in Los Angeles, and that everyone would have to go along or be put out of business by the Union.

28. In or about the month of October, 1954, a majority of the grease peddlers in Los Angeles County, including defendants Taylor, Brandt, Klein, and Carlis, joined the

defendant Union and became parties to and agreed to engage in the program which had been proposed by defendant Singer and other union representatives as set forth in paragraph 26, above.

29. At or about the same time, defendant Singer informed processors B & H and Allied that they would not be permitted by the defendant Union to purchase grease from non-union peddlers, and that if they did so, the union grease peddlers would not sell restaurant grease to them, and they would be picketed by the union. At that time B & H and Allied agreed with defendant Singer that they would not purchase restaurant grease from non-union peddlers, thereby becoming parties to the combination and conspiracy alleged.

30. During the entire period from October 1954 to May 1959, inclusive, the grease peddler members of defendant Union were established and recognized by defendant Union as a group or segment separate and distinct from employee members of defendant Union. Throughout the said period, meetings of the grease peddler members of defendant Union were called by defendant Singer or Al Menard, secretary-treasurer of defendant Union, and said meetings were held, separate from meetings of employee members of defendant Union. In April 1955, the grease peddler members of defendant Union were placed in a division of defendant Union named Local 626-B. The great majority of the grease peddlers in Los Angeles County, California, were members of defendant Union from 1954 to 1959, inclusive.

31. From the month of October 1954 to the month of May 1959, inclusive, defendant Singer was assigned by defendant Union to work with and to conduct the affairs of the grease peddler segment of the union.

32. Beginning in or about the month of November 1954 and continuing thereafter to the year 1957, defendant

Singer determined the prices to be paid by processors to peddlers for restaurant grease and the processors agreed to and did pay the prices so fixed and determined by defendant Singer.

33. Throughout the period from October 1954 to May 1959, inclusive, grease peddler members of defendant Union were instructed by defendant Singer to refrain from soliciting, or buying restaurant grease from, the accounts of other peddlers, and the grease peddler members of defendant Union agreed so to do.

34. During said period defendant Singer allocated accounts among union grease peddlers in all instances in which there were disputes as to said accounts, and defendant Singer, in conjunction with the committee, and sometimes with approval of the grease peddler segment of defendant Union, imposed fines or suspensions on grease peddler members failing to adhere to such allocations or who solicited or purchased grease from the accounts of other peddlers. During the period of such suspensions, the suspended grease peddlers were prohibited and prevented from selling their grease to processors.

35. From time to time, Singer allotted territories to various Union peddlers, and told other peddlers that they must stay out of those territories. Certain peddlers were suspended from the Union for failure to follow these instructions, and thereby prevented from selling grease to processors.

36. In November 1954, a majority of the Union grease peddlers formed a trade association named Los Angeles Grease Buyers Association, to help to improve the condition and standing of peddlers, by eliminating the theft of grease and adherence to a code of ethics. The association had no procedure under which it was able to discipline members or enforce adherence to its activities. In March,

1955, at a meeting of Union peddlers, defendant Singer told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do. He referred to the prosecution of rubbish collectors and a man named Matula, and said that this showed the danger of acting through an association as against action through a union. As a result of this meeting, the association became defunct.

37. In February 1955, defendant Singer called a strike against Washington Rendering Company, and established around the plant of said company a picket line composed of grease peddler members of defendant Union, because it had purchased restaurant grease from a grease peddler who was not a member in good standing in defendant Union. The plant was completely closed down because of this strike and picket line. Defendant Singer demanded that Washington agree not to make any further purchases of restaurant grease from any grease peddler who was not a member in good standing of defendant Union, as a condition to lifting the strike and removing the picket line. The strike was lifted and the picket line was removed when Washington agreed that it would not buy restaurant grease from non-union grease peddlers, and thereby became a party to the combination and conspiracy alleged.

38. In March 1955, Singer and Mike Grancich, business agents of defendant Union, went to the plant of a man named Schrader who was engaged in the processing of fish oils and told him that unless he stopped buying grease from two non-union peddlers, he would have union trouble. Schrader complied with this demand.

39. In 1955, Singer asked Sam Stone, owner of Allied Grease and Tallow Company, to write a $100 check to defendant Union to pay the initiation fee of a peddler named Galerkin, who theretofore had been a non-union peddler and who had agreed to join the Union if he would

thereby be enabled to sell his grease to processors. Mr. Stone issued the check. Galerkin was admitted to defendant Union, and began selling grease to Allied.

40. In November 1955, defendant Singer called a strike against Baker Rendering Company and established around the plant of said company a picket line composed of grease peddler members of defendant Union because said company allegedly had made a purchase of restaurant grease from a peddler who was not a member in good standing of defendant Union.

41. In January 1956, defendant Singer established a picket line around the processing plant of Harbor Industrial Sales, which had entered into the business of processing restaurant grease into yellow grease about the middle of December 1955. Harbor was purchasing restaurant grease from grease peddlers who were not members in good standing of defendant Union. This picket line was maintained for a period of several weeks. In addition, defendant Singer and the grease peddler segment of defendant Union sought to induce the grease peddlers who had been selling restaurant grease to Harbor Industrial Sales to join the union and to stop selling to that company. These efforts were successful and Harbor Industrial Sales ceased operations in April 1956 because of its inability to secure sufficient quantities of restaurant grease to continue its business.

42. Following the establishment of the picket line around the plant of Harbor Industrial Sales in early 1956, defendant Singer told the owner of that business that if he could learn the name of his landlord and the buyers to whom Harbor was selling yellow grease, that he would bring pressure through the Union to have Harbor's lease cancelled and to have the buyers stop dealing with Harbor. Singer said he did not want Harbor in the grease business.

43. In March 1956, the owners of B & H Processing Company were asked by Singer to loan $1,000 to a man named Bernard Kay, who had previously been operating as a non-union peddler, selling grease to Harbor Industrial Sales, and who had agreed to become a Union member. With knowledge that Kay was a poor credit risk, the owners of B & H loaned the money to Kay, because of fear of trouble with Singer and defendant Union unless they did so. Kay stopped selling to Harbor Industrial Sales and sold his grease to B & H for several weeks. The loan was never repaid.

44. In July 1958, a new company named Star Grease Company engaged in the processing of restaurant grease into yellow grease. A number of peddlers who had previously been selling restaurant grease to B & H Processing Company began to sell to Star Grease Company. As a result of this competition for the business of peddlers, the prices paid by processors for restaurant grease were increased.

45. At a meeting of the grease buyer segment of defendant Union in late August 1958, defendant Singer announced that thereafter no grease peddler would be permitted to pay more than one cent per pound for restaurant grease. This price of one cent constituted a substantial reduction from the prices which the peddlers had been paying for restaurant grease. At this meeting, defendant Singer gave instructions that all Union peddlers were to cease the sale of restaurant grease to Peterson Manufacturing Co. All grease peddlers who had been selling to said company immediately ceased such sales and thereafter made no sales of restaurant grease to Peterson. At this meeting, defendants Taylor, Brandt, and Klein were appointed members of a committee of the grease buyers segment of defendant Union to assist in policing, enforcing, and carrying out the program to suppress and eliminate

competition among grease peddlers and among processors. Early in 1959, upon the resignation of defendant Klein from said committee, defendant Carlis was appointed as a member of said committee, and served thereafter to and including the month of May 1959.

46. Following the instructions given by Singer in late August 1958, that Union peddlers were to stop selling grease to Peterson Manufacturing Co., Singer told the president of that company that the purpose of the Union was to improve the lot of peddlers and the processors buying from peddlers, and that the peddlers would not be permitted ever again to sell to Peterson. Following that conversation no Union peddler in good standing has ever sold grease to Peterson, even following the filing of the complaint.

47. Some of the grease peddlers who had been selling to Peterson transferred their restaurant grease sales to Star and to B & H, but a major part of the volume of restaurant grease which had previously gone to Peterson was transferred to Washington. Star appealed to defendant Singer and the grease peddler members of defendant Union to take action to cause more of the peddlers to transfer their business to Star.

48. In September 1958, Singer asked B & H Processing Company to help out Star Grease Company, which he said was having trouble selling its grease, by selling for Star about 80,000 pounds of grease. B & H sold this grease for Star, because they feared they would have trouble with Singer and defendant Union if they refused.

49. In early September 1958, defendant Singer was on a trip to Hawaii. During his absence, Star and B & H requested the union committee to reduce the price to be paid by processors to peddlers for restaurant grease. The committee refused to take action, and the owner of Star made

a trip to Hawaii, financed in part by B & H, to appeal to defendant Singer for favorable action on the requested reduction in prices paid by processors to peddlers for restaurant grease. Defendant Singer agreed to take action on the request upon his return to Los Angeles.

50. Following his return, at a meeting of the grease peddlers' segment of the union on September 18, 1958, defendant Singer called for a discussion of prices to be paid for restaurant grease by processors to peddlers. Defendant Singer then announced that the price would be reduced by ¾ cent per pound, effective on September 19, 1958. Beginning on September 19, B & H, Star, and Washington all reduced their prices ¾ cent per pound, and continued thereafter to pay this reduced price.

51. At the meeting on September 18, 1958, objections were made by some peddlers to the ruling that peddlers could not pay more than one cent per pound for restaurant grease, and a question was raised as to illegality of such a ruling. Defendant Singer emphatically stated that the one cent price was to be strictly followed, and that any peddler paying more would find himself in trouble. Singer said it would do no good for anyone to appeal to the federal or local governments, because the union had plenty of money and would fight any effort to interfere with the union's activities.

52. At a meeting of the grease peddlers' segment of the union on October 15, 1958, a complaint was made against a peddler for trying to get a price for restaurant grease from a processor higher than the reduced price fixed by defendant Singer on September 18. The peddler was sentenced by defendant Singer to a suspension of one month. Another peddler was accused of paying more than one cent per pound for restaurant grease and was called upon by defendant Singer for an explanation. One week later this peddler was suspended for six months by defendant Singer, and was put out of business.

53. At a meeting on October 15, defendant Singer announced that he intended to divide the sales of restaurant grease by peddlers equally between the three processors, and he called a meeting on October 16, 1958, to be attended by himself, the union committee, and the processors.

54. The meeting on October 16, 1958, was attended by defendants Singer, Taylor, Klein, and Brandt, and by owners of B & H and Washington. Defendant Singer announced that he was representing Star Grease Company. The processors were required to submit information concerning the volume of grease which they were purchasing from each peddler. The committee and defendant Singer reviewed these data and decided that certain peddlers would be shifted from Washington and B & H to Star in order to put all three processors on an approximately equal basis in the volume of grease purchased by them from peddlers. Defendant Singer announced the names of those peddlers who had previously been selling grease to Washington and B & H who would be required thereafter to sell to Star.

55. Immediately after this meeting, those peddlers named by defendant Singer were notified by the union committee of the action taken, and they ceased to sell grease to Washington and B & H and transferred their business to Star. Washington and B & H lost a substantial volume of grease from grease peddlers, with resultant reduction in their production and sales of yellow grease, and the grease sold by grease peddlers to these processors was so divided and allocated that each of the three processors thereafter got approximately one-third of the restaurant grease sold by grease peddlers.

56. During the period from August 29 to the end of 1958, defendant Singer, and the union committee composed of defendants Taylor, Brandt, and Klein, made investigations and conducted hearings on complaints that union

peddlers had solicited accounts of other peddlers, and had paid more for restaurant grease than the one cent maximum fixed by defendant Singer. Several peddlers were suspended for a month for violation of these orders. During the period of said suspensions, the suspended grease peddlers were prevented from engaging in the business of buying and selling restaurant grease.

57. In late 1958, Peterson made a purchase of grease from a peddler who had been suspended from the Union and Mike Grancich, business agent for defendant Union, called Peterson and said to stop buying grease from the peddler or Peterson would have labor trouble. Peterson complied with this demand because it wanted to avoid labor trouble.

58. In February 1959, after the owner of Washington Rendering Company publicly testified in a Congressional Committee concerning the aforesaid activities of defendant Singer and the defendant Union, several union peddlers, including defendants Taylor and Klein, stopped selling restaurant grease to Washington. Thereafter, for the first time since 1955, Washington made purchases of restaurant grease from non-union members. The union committee, at that time composed of Taylor, Brandt, and Carlis, arranged to have the trucks of said non-union peddlers followed to each of their accounts and subjected said non-union peddlers to harassment and threats of physical injury.

59. On May 12, 1959, a strike was called by defendant Union against Washington Rendering Company and a picket line was established by defendant Singer around the plant of said company, which picket line was composed primarily of grease peddler members of defendant Union. This strike continued for more than two months and virtually stopped the yellow grease business of Washington.

60. The strike was called ostensibly on the ground that Washington Rendering Company did not have a labor contract with defendant Union. In fact, the strike was called in reprisal against the owner of Washington Rendering Company for his opposition to the above-described activities of defendant Union. The strike was subsequently declared by the National Labor Relations Board to be an illegal strike.

61. On the same day that the complaint herein was filed on May 27, 1959, an indictment was returned against defendant Union and defendants Singer, Taylor, Brandt, and Klein, charging violation of the antitrust laws in substantially the same terms as are charged in this complaint. In June 1959, while the plant of Washington Rendering Company was closed down because of the strike by defendant Union, defendant Singer spoke to Morris Gurewitz, proprietor of Washington Rendering Company. Singer blamed Gurewitz for having caused the indictment by testifying before the Senate Committee. Singer said that the Union could keep the strike going against Gurewitz for years.

62. During the pendency of a motion by the National Labor Relations Board in the United States District Court for the Southern District of California for an injunction against the strike, defendant Singer told Morris Gurewitz that although the Court might issue a 30 or 60-day injunction against the strike, when that time was up the defendant Union would have Gurewitz right back where he was before. Singer referred to the loss of business suffered by Gurewitz as a result of the strike, and told Gurewitz that his troubles with the Union were not over and would get worse. Singer said that Gurewitz also had employees in other unions and that if Gurewitz got an injunction against defendant Union, he would have trouble with other unions.

63. In October 1959, Singer boasted to Gurewitz about the trouble which had been caused Gurewitz by Singer and the Union, and said that Gurewitz would have more trouble. Singer said that even if he had to go to jail, the unions would keep Gurewitz in hot water, and that there were plenty of other people in the Union to take care of Gurewitz. Singer said that when the Union was through with Gurewitz, then it would start in on Ben Cohen, of B & H Processing Company, who had also testified before the Senate Committee.

64. During the course of the proceedings in the companion criminal case, resulting in pleas of *nolo contendere* by defendants' Union, Singer, Taylor, Brandt, and Klein, the Government disclosed in a statement filed with the Court the activities of defendant Singer, and the committee composed of defendants Taylor, Brandt, Klein, and Carlis, described in detail in the foregoing paragraphs of this judgment. At no time has defendant Union, taken any disciplinary action against defendant Singer or the members of the committee, or terminated the existence of the committee, or expelled from membership in the Union any of said defendants or other grease peddlers.

65. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to make use of peddlers for strike breaking purposes.

66. At no time have any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the acquisition of restaurant grease.

67. Since this case was filed defendant Union submitted statements to the Court in the companion criminal case, signed by numerous peddler members of said Union, stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease

and paying too much for restaurant grease. These peddlers expressed their conviction that defendant Union is the only organization capable of accomplishing these results for them. The statements of each of these peddlers referred to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to any benefit which might be derived by any employees of processors by reason of peddler membership in the Union.

68. Every processor of yellow grease in the Los Angeles area has employees who are members of defendant Union.

69. There are in operation at the present time in the Los Angeles area only two processors of yellow grease who make any regular or substantial purchases of restaurant grease from peddlers—B & H Processing Company and Star Grease Company. William Saunders, owner of Star Grease Company, is a member of defendant Union. Henry Cohen, a partner in B & H Processing Company, is a member of defendant Union.

70. From the time it commenced business in July, 1958, to the present time, Star Grease Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the filing of the complaint herein Star has continued to follow this policy and practice.

71. From the fall of 1954 to the present time, B & H Processing Company has followed the policy and practice of buying grease only from those peddlers who were members of defendant Union. Since the complaint was filed herein B & H consistently refused to purchase grease from non-union peddlers.

72. Between October, 1954, and the present time defendant Union, as a chartered affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

Helpers of America, was subject to the provisions of the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

CONCLUSIONS OF LAW.

1. The activities of the defendants and co-conspirators constitute an unreasonable restraint upon foreign trade and commerce in yellow grease.

2. The defendants and co-conspirators have combined and conspired in unreasonable restraint of foreign trade and commerce in yellow grease in violation of Section 1 of the Sherman Act (15 U. S. C., § 1).

Final Judgment.

In accordance with the foregoing findings of fact and conclusions of law, It Is Ordered, Adjudged and Decreed:

I.

As used in this Final Judgment.

(a) Restaurant grease means waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions.

(b) Yellow grease means an inedible grease produced primarily by removal from restaurant grease of most of the moisture and impurities. It usually has a minimum melting point or titer of about 36 degrees centigrade; a yellowish color of about 57 FAS; no more than 2 per cent of moisture, impurities and unsaponifiables; and a minimum content of about 10 per cent or more of free fatty acids.

(c) Processor means a person engaged in the business of producing yellow grease from restaurant grease.

(d) Peddler, or grease peddler, means a person who is a self-employed entrepreneur engaged for his own account in the business of buying restaurant grease from restaurants.

hotels and institutions, transporting said grease in trucks to the plants of processors, and selling such restaurant grease to said processors.

(e) Local 626 means defendant Los Angeles Meat and Provision Drivers Union, Local 626, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

(f) Persons means any individual, partnership, corporation, association, or other legal entity.

II.

(a) The provisions of this Final Judgment applicable to defendant Local 626 shall apply to such defendant, to each of its members, officers, trustees, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(b) The provisions of this Final Judgment applicable to defendants Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis shall apply to each of said defendants, his agent and employees, and to all other persons in active concert or participation with said defendants or any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III.

Since 1954, defendants Local 626, Meyer Singer, Lee Taylor, Hubert Brandt, Walter Klein, and Harold Carlis (hereinafter collectively referred to as the defendants) have engaged and continued to be engaged in a combination and conspiracy among themselves and others to suppress and eliminate competition in the gathering, purchase, sale, and distribution of yellow grease in violation of Sec-

tion 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

IV.

The defendant Local 626 is ordered and directed:

(a) To expel promptly from membership all grease peddlers;

(b) To refuse membership at any time in the future to any grease peddler;

(c) To expel from membership any member who becomes a grease peddler;

(d) To furnish a copy of this decree to all grease peddlers who are now members of Local 626.

V.

Each defendant is enjoined and restrained from:

(a) Entering into, adhering to, maintaining, furthering, or participating in any contract, agreement, understanding, plan, or program with any defendant, processor, peddler, or any other persons:

(1) To limit the number of peddlers who can engage in the gathering, purchase, or sale of restaurant grease;

(2) To allocate among peddlers the restaurants, hotels, or institutions from which restaurant grease may be purchased by peddlers;

(3) To allocate among processors the peddlers from whom processors may purchase restaurant grease;

(4) To allocate among processors the quantities of restaurant grease to be purchased from peddlers;

(5) To prevent processors from buying restaurant grease from peddlers of their own choice or prevent

peddlers from selling restaurant grease to processors of their own choice;

(6) To establish, maintain, fix, or determine the prices paid by third persons to restaurants, hotels, and institutions for restaurant grease;

(7) To establish, maintain, fix, or determine the prices for restaurant grease sold to processors by third persons, and the prices paid for restaurant grease by processors to third persons.

(b) Directly or indirectly persuading, inducing, or compelling, or attempting to persuade, induce, or compel any defendant, processor, peddler, or any other person, by boycott, strikes, or picketing, or by threats thereof, or by any other means, to do or participate in the doing of any of the things set forth in subparagraphs (1) to (7) of subsection (a) in this Section V.

VI.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to a defendant at its or his principal office, subject to any legally recognized privilege, be permitted:

(a) Access during office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of such defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of such defendant, and without restraint or interference, to interview the officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon order of this Court made on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VII:

Defendant Local 626 is ordered and directed to pay all costs to be taxed in this case.

/s/ Wm. M. Byrne,
United States District Judge.

Dated: July 14, 1961.

Received copy of the within Findings of Fact, Conclusions of Law, and Final Judgment at 8:45 A. M. o'clock on 7th day of July, 1961.

(Illegible.)
Attorney for Defendants.

Approved as to form:

.....,
Attorney for Defendants.

Disapproved as to Form:

(Illegible.)
Attorney for Defendants.

APPENDIX "C."

Sherman Anti-Trust Act, Sections 1 and 4, 15 U. S. C. Sections 1 and 4:

"1. *Trusts, etc., in restraint of trade, illegal; exception of resale price agreements; penalty:*

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any

combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat 693."

"4. *Jurisdiction of courts; duty of district attorneys; procedure.*

"The several district courts of the United States are invested with jurisdictions to prevent and restrain violations of sections 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final degree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, c. 647, § 4, 26 Stat. 209; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167."

Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52:

"17. *Antitrust laws not applicable to labor organizations.*

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the

antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. Oct. 15, 1914, c. 323, § 6, 38 Stat. 731."

"52. *Statutory restriction of injunctive relief.*

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading

any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. Oct. 15, 1914, c. 323, § 20, 38 Stat. 738."

Norris-LaGuardia Act, Section 4, 29 U. S. C. Section 104:

"104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70."

National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b) (1):

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

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No. 38

In the Supreme Court of the United States

OCTOBER TERM, 1961

LOS ANGELES MEAT & PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

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LEE LOEVINGER,
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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 511

LOS ANGELES MEAT & PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 1(c), of the Revised Rules of this Court, appellee moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the final judgment of the district court in a civil antitrust case, entered after defendants stipulated that they had unreasonably restrained trade in violation of Section 1 of the Sherman Act by fixing prices and eliminating competition in the sale of waste restaurant grease. The only issue presented is whether, in the circumstances of this case, the district court properly included in its judgment a provision ordering the appellant union to

expel from membership all grease peddlers, and enjoining it from admitting such persons. The relevant facts, as set out in the district court's opinion (J.S. 11–29), and in its findings of fact (J.S. 30–50) (which are taken verbatim from a stipulation of facts entered into by the parties (R. 20–41)), are as follows:

Grease peddlers are independent businessmen who buy, transport, and then sell waste restaurant grease on their own account (J.S. 31). They drive from restaurant to restaurant to pick up grease, and then deliver and resell their collections to a processing company (J.S. 32). The peddlers' profits depend on the margin between the price they pay for the grease and the price they obtain from the processor (*ibid.*); they are not employees of the processors (J.S. 31). The processing companies treat the grease and sell the converted product (yellow grease) in the foreign commerce of the United States (J.S. 34–35).

Until 1954, the Los Angeles grease peddlers operated as ordinary independent businessmen and were not affiliated with any union. They were in intense commercial competition with one another in purchasing grease from the restaurants in the area (J.S. 36–37). In 1954, appellant Singer, a business agent of the appellant union, proposed to various grease peddlers a plan to eliminate this competition: the union would increase the margin between purchase and sale prices of waste grease, grease peddlers would be forbidden to solicit or purchase grease from restaurant accounts of other peddlers, processors would be permitted to buy grease only from unionized peddlers, and grease peddlers who refused to become members

of the program would be forced out of business (J.S. 37).

By October 1954, most of the grease peddlers in Los Angeles had joined the union and the plan was put into effect (J.S. 37–38). The peddlers were organized as a separate unit in the Los Angeles Meat and Provision Drivers Union (an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), which became known as Local 626–B (J.S. 38). During the period October, 1954 to May, 1959, between 35 and 45 grease peddlers were members of that unit (J.S. 31). The major membership of the union consisted of about 2400 truck drivers, engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (*ibid.*). Some grease processors also used truck driver members of the union to pick up and transport restaurant grease (J.S. 34).

Commencing in November 1954, acting in conjunction with the peddlers, Singer fixed purchase and sales prices for waste restaurant grease in the area, and allocated the sales and purchase of waste grease among the various peddlers and among the various processing companies (J.S. 38–39). Grease peddlers who violated the terms of the program, by deviating from the price levels fixed or by attempting to secure other peddlers' accounts, were disciplined by fines or suspension from business, and in some cases were put out of business (J.S. 39–48). Grease processing companies which did not follow the combination's de-

mands were disciplined by boycott (*ibid.*), and at least one processor was eliminated from business (J.S. 41).

On May 27, 1959, an indictment was returned against the appellants (the local union, its business agent, and four grease peddler members) charging them with violating Section 1 of the Sherman Act (15 U.S.C. 1) by fixing prices, allocating customers and accounts, and eliminating competitors. On the same day, the United States filed the present civil action to prevent and restrain this course of conduct. Appellants pleaded *nolo contendere* to the criminal charges, and stipulated the foregoing facts in the civil action. Appellants further stipulated that they had unlawfully combined and conspired in direct, substantial, and unreasonable restraint of trade and commerce, and that the government was entitled to injunctive relief perpetually enjoining them from participating in, or forcing grease processors to participate in, any plan to fix prices and eliminate competition in the gathering of waste grease by peddlers and their selling it to processors (J.S. 14; see R. 40).

The only remaining issue in the case was whether the decree should include a provision excluding the grease peddlers from the union until they become bona fide employees. The district court held that "[a]s long as this association of the peddlers and the Union continues, there is danger that their combined activities will be revived and that further suppression of competition in the yellow grease industry will result" (J.S. 28); and it included such an exclusionary provision, since it would be "the most effective, if not

the only means" to prevent resumption of the unlawful activities (*ibid.*).

ARGUMENT

The sole issue on this appeal is whether the district court abused its discretion in ordering independent businessmen to dissociate themselves from a labor union, a special subdivision of which they formed and joined as a vehicle for price fixing and other violations of the Sherman Act. The grease peddlers, it is agreed, are not employees. They are not covered by the National Labor Relations Act or the Norris-LaGuardia Act. There was no evidence before the district court showing that the exclusion of peddlers from the defendant union would injure or otherwise affect the employee members. Knowing the circumstances in which the peddlers joined the union, the district court found that there was danger that violations would recur "[a]s long as this association of the peddlers and the Union continues." (J.S. 28). Since this case involves only the application of a trial judge's undoubted discretion to frame relief which will effectively prevent repetition of the unlawful conduct, the appeal fails to raise a substantial question.

Conversely, the case does not raise any question concerning the power of a court to require employee members to sever their connection with a labor union utilized to violate the antitrust laws. No question is raised concerning the right of nonemployees to join unions or to undertake, jointly with employee members of labor unions, programs of mutual assistance not violating the antitrust laws. No question is pre-

sented concerning the right of a union to organize independent peddlers who are competing with the employee members of the union in the performance of an economic function; for there was no evidence offered to the district judge of direct or indirect competition between the peddlers and the truck drivers who were the union's normal members.

1. A court of equity has unquestioned authority to order dissolution of a voluntary organization which has been formed and used as a combination in restraint of interstate trade or commerce. Such orders have frequently been directed against trade associations. See, *e.g.*, *Hartford-Empire Company* v. *United States*, 323 U.S. 386, 428, and the final decrees in *United States* v. *Trans-Missouri Freight Association*, 166 U.S. 290, 297, 300, 308–309 (final decree reprinted in 1 Fed. Antitrust Dec. 80) and in *United States* v. *United Liquors Corp.*, 149 F. Supp. 609 (W.D. Tenn.), affirmed, 352 U.S. 991 (final decree reprinted in J. St., No. 637, O.T. 1956, see p. 23a, par. VII). Applying the label "labor union" to the combination formed by the defendant peddlers does not change its true character. Indeed, it is stipulated that after the peddlers had formed a trade association "to help to improve the[ir] condition and standing * * * by * * * adherence to a code of ethics," the business agent of the local "told the peddlers to choose between the Union and the association, stating that the association could not lawfully do for the peddlers what the Union could do" (J.S. 39–40, Fndg. 36). The fact that the peddlers' combination was a subdivision of a regular labor organization do-

immunize it from dissolution because the decree does not affect the normal and legitimate activities of the employees or their union.

The record supports the district court's conclusion that the peddlers' association with the union was "not for the purpose of raising the wages and working conditions of the peddlers and the union employees of the processors, but for the sole purpose of increasing the income of the peddlers alone, and enabling the Union, the peddlers and the processors to control the business of purchasing and selling waste grease in the Los Angeles area" (J.S. 17). The court's unchallenged findings, based on the stipulated facts, indicate (J.S. 38–48) that the grease peddlers' unit in the union devoted its efforts to fixing sales and purchase prices for waste grease, allocating grease sellers and buyers, and eliminating recalcitrant independents from business, rather than attempting to improve the wages, hours, and other terms and conditions of employment of bona fide employee union members. During the entire period in question "the grease peddler members of defendant Union were established and recognized by [it] as a group or segment separate and distinct from employee members of defendant Union," which held its own separate meetings; for most of that period the grease peddlers were a separate "division of [the] Union named Local 626–B" (J.S. 38, Fndg. 30). Significantly, while the peddlers submitted statements in a companion criminal case that their organization in the union was necessary to regulate their activities, the court below correctly pointed out (J.S. 48–49, Fndg. 67) that all of these statements

"referred to the benefits which the peddlers derived from their Union membership and none of them mentioned or referred to benefit which might be derived by any employees of processors by reason of peddler membership in the Union."

Appellants argue (J.S. 8–10) that the mere existence of the peddlers in the transportation field posed a competitive threat to the jobs, wages and working conditions of its employee members which was sufficient to justify the peddlers' being organized into the union, and, presumably, to prevent the court from ordering them to dissociate themselves from the union. But this is a contention made without evidentiary support. No testimony was introduced before the district judge showing that the peddlers and employee members of the union operated similar routes or performed competing economic functions. Nor is there anything in the record that suggests that the level of peddlers' profits or peddlers' working conditions either directly or indirectly affected the wages or working conditions of the employee members. No such inference can be drawn from the bare fact that some employees of processors, who are members of the union, pick up grease from sources other than those normally served by the peddlers. The district court specifically found that no processors in the Los Angeles area had "taken action, or threatened to take action, to make use of peddlers for strike breaking purposes" nor had "any processors in the Los Angeles area taken action, or threatened to take action, to substitute peddlers for driver-employees in the ac-

quisition of restaurant grease" (J.S. 48, Fndgs. 65–66). For these reasons the record does not present the question whether the peddlers could have been required to sever their connection with the union to prevent the recurrence of the unlawful practices had such severance also raised a threat to wages or working conditions. For the same reasons such cases as *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and *Teamsters Union* v. *Oliver*, 358 U.S. 283, are irrelevant.[1]

2. Appellants argue (J.S. 6–8) that their constitutionally guaranteed right of freedom of association and the specific provisions of the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.*, precluded the district court from expelling and excluding independent businessmen from the union, despite the unchallenged finding that these businessmen misused the union to violate the antitrust laws.[2] The constitutional argument may

[1] In both of those cases, unlike the present case, the records showed that the activities of the milk peddlers and the truck owner-operators had seriously affected the wages and working conditions of the union members for a long time; in neither of them was there any indication that the milk peddlers and truck owner-operators had sought union membership merely to achieve their own non-labor objectives. *Lake Valley*; see 311 U.S. at 95–96: *Oliver*: Record, No. 49, O.T. 1958, pp. 196–200, 202 (opening statement); 219–220 (offer of proof); cf. *id.* 114–115, 138–139 (first trial).

[2] Appellants also point to the proviso to Section 8(b)(1) of the National Labor Relations Act, 29 U.S.C. 158(b)(1), providing that nothing in that section shall "impair the right of a labor organization to prescribe its own rules with respect to

be dismissed immediately, we believe, for the First Amendment has never been held to guarantee businessmen or any other group the freedom to combine and conspire in restraint of trade. See *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490.

The Norris-LaGuardia Act is inapplicable to this case. The limitations which that Act imposes upon the power of the district courts to grant injunctive relief is limited to cases "involving or growing out of a labor dispute" (29 U.S.C. 101); and a labor dispute is defined as a controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating with respect to such terms and conditions (29 U.S.C. 113(c)). This Court has expressly held that no labor dispute is involved where the activities of the members of a labor union or similar association relate not to the activities of employees but to "a dispute among businessmen * * * over the sale of commodities." *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143, 145; see *American Medical Ass'n* v. *United States*, 317 U.S. 519, 531; *Allen-Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797, 807, n. 12 (distinguishing *Columbia River Packers* v. *Hinton*, because "Local 3 is a labor union and its spur to action related to wages and working conditions"); *Bakery Drivers Union* v. *Wagshal*, 333 U.S. 437, 443; *United States* v. *Women's Sportswear*

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the acquisition or retention of membership therein." But this proviso merely qualifies the provision in that Act making any union restraint or coercion of employees' rights to join or not to join a labor organization an unfair labor practice.

Ass'n, 336 U.S. 460, 464. As we have shown, this case involves neither employees nor labor objectives.

3. Finally, appellants claim (J.S. 10) that, since the decree requires the expulsion from the union of 35 to 45 grease peddlers who are not parties to this case, the latter group could not be denied union membership, consistently with due process of law, "unless they are accorded an opportunity to be heard." But the union obviously appeared before the district court in behalf of *all* of its members, and if any of them felt that the union was not adequately representing their interests, they were free to seek intervention. Cf. *Sam Fox Publishing Co. v. United States*, 366 U.S. 683. Indeed, the district court indicated (J.S. 25) that such other members could have participated in the hearing, had they wished to do so.

CONCLUSION

The decision below is correct and this appeal presents no question warranting plenary consideration by this Court. The judgment of the district court should be affirmed.

Respectfully submitted.

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DECEMBER 1961.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 38.

OCTOBER TERM, 1962.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 38.

OCTOBER TERM, 1962.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

BRIEF FOR APPELLANTS.

OPINION BELOW.

The opinion below is reported in 196 F. Supp. 12 and appears at pages 40 through 55 of the record.

JURISDICTION.

This civil suit was brought under Section 4 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 4, to restrain certain activities alleged to be in violation of Section 1 of that Act. The judgment of the court below was entered on July 14, 1961, and a notice of appeal filed on July 26, 1961. The jurisdiction of this Court to review the judgment below, by direct appeal, is conferred by 15 U. S. C., Secs. 28 and 29, and 49 U. S. C., Secs. 44 and 45. Probable jurisdiction was noted on January 15, 1962 (R. 82).

QUESTIONS INVOLVED.

This is a civil action, under the Sherman Anti-Trust Act, to restrain a labor union from engaging in price fixing and customer allocation practices pursuant to an agreement between the union and a group of its truck driver members known as peddlers. The owner-driver-peddlers are independent contractors even though their only asset is a small equity in a truck and their only skill is the ability to drive a truck. The court below enjoined not only conduct of the type found to be unlawful, but also entered an order requiring the union to expel all such members and to refrain from admitting such persons to membership in the future. The questions presented are whether those portions of the judgment relating to the expulsion and readmission of owner-driver-peddlers:

1. Unlawfully deny to the Appellant its right to determine the conditions of acquiring and retaining membership in the Union conferred by the Clayton, Norris-LaGuardia and National Labor Relations Acts.

2. Unlawfully deny to the Appellant and its members rights of due process of law and freedom of association.

STATUTES INVOLVED

The statutes primarily involved are: The Sherman Anti Trust Act, Sections 1 and 4, 15 U. S. C., Sections 1 and 4; the Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52; the Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104; and the National Labor Relations Act, Section 8 (b) (1), 29 U. S. C., Section 158 (b), (1). These statutory provisions are set forth in Appendix A, *infra*, p. 21.

STATEMENT

Appellant, Los Angeles Meat and Provision Drivers Union, Local 626, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to as the "Union") is a labor organization with a membership of approximately 2,400 persons (R. 56). Most of the Union's members are truck drivers engaged in loading, unloading and transporting meat and meat products for packing houses and related employers (R. 56). Between October, 1954, and May, 1959, the period covered by the complaint, there were 35 to 45 owner-driver-peddlers who were members of the Union (R. 56). Only four of the owner-driver peddler union members were joined as parties to this proceeding (R. 57). Appellant Singer, at all times material, was a business representative but not an officer of the Union (R. 57).

On May 27, 1959, the Justice Department filed a civil complaint alleging that the Union and its owner-driver peddler members were engaging in conduct which violated Section 1 of the Sherman Anti-Trust Act, 15 U. S. C., Sec. 1 (R. 1-12). The parties entered into detailed factual stipulations in which the Union consented to a finding that price fixing and account allocation activities engaged in by the Union and its owner-driver peddler members were unlawful (R. 24, 27, 29-30). The Union does not challenge those portions of the decree which restrain price fixing, account allocation and related conduct.

The owner-driver-peddler purchases grease[1] from hotels, restaurants and institutions. The owner-driver-peddler then transports the grease in a truck, which he either owns or rents, to the plant of a processor (R. 57). Owner-

[1] "Restaurant grease is waste grease resulting from the preparation of foods in kitchens of restaurants, hotels and institutions" (R. 57-58).

driver-peddlers have no established place of business, no employees and no capital investment except a small equity in a truck (R. 57). Moreover, the owner-driver peddlers have no skill or special qualifications except the ability to load, unload and drive a truck (R. 57). Their earnings consist of the difference between the purchase and sale price of grease, reduced by the cost of operating a truck (R. 57), but they are not considered employees of the processor (R. 57).

During the 1954-1959 period involved in this case, there were eight processors in Los Angeles County (R. 58), six of whom acquired all or a substantial part of their grease from owner-driver peddlers (R. 58). All of the processors employed members of the Union conceded to be bona fide employees (R. 73), and four of the processors employed employee-union members to pick up and transport grease from restaurants and other institutions to the processor's plant (R. 59).

The judgment entered by the court below contains detailed restraints against price fixing, account allocation, and related acts (R. 76). In addition, the judgment confers rights of visitation to insure future compliance (R. 77). The judgment further requires the Union to expel its owner-driver-peddler members and to refuse to admit such persons to union membership in the future (R. 75-76).

In ordering the union to expel its owner-driver peddler members, the court below stated that such persons were not a proper subject of unionization in the absence of proof of competition between the peddlers and employee members of the Union (R. 47). And, according to the court below, no "competition" exists in this case (R. 48). Having concluded that owner-driver-peddlers were not a "proper subject of unionization" (R. 48) the court below felt free to invoke and rely upon cases involving divestiture of illegally acquired stock. Upon such authority the Union was ordered to expel its peddler members.

SUMMARY OF ARGUMENT.

A decree issued by a single judge in a civil anti trust case is here for review. Upon the stipulation of the Justice Department and the Union, the court below permanently restrained various acts prohibited by the Sherman Act. These features of the decree are not challenged; however, the Union does challenge those portions of the decree which require it to expel members who are owner driver-peddlers. Anti-trust decrees which come here directly are for that reason subject to the "most careful scrutiny of this Court." *International Boxing Club v. United States*, 358 U. S. 242, 253.

The Sherman Act does not contain a direct reference to labor organizations and as applied to labor organizations it cannot be read apart from the Clayton and Norris-La Guardia Acts. *United States v. Hutcheson*, 312 U. S. 219, 231. A labor organization does not forfeit the protection of these statutes as a consequence of engaging in conduct proscribed by the Sherman Act. *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812.

In statutes such as the Clayton, Norris LaGuardia and the Labor Management Relations Act, all of which are concerned expressly with labor unions, the Congress has manifested a plain intention to refrain from interfering with the right of unions to determine their own membership. The expression of policy embodied in these statutes should serve as an admonishment to courts exercising anti trust jurisdiction to eschew the role of arbiter of the internal affairs of labor organizations.

The interdependent character of an industrial society is such that workers "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri City Council*, 257 U. S. 184,

209. During the past twenty five years the conditions of employment in the transportation and service trades have been constantly under assault as a consequence of the owner-driver peddler system. *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91; *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769; *Local 24 v. Oliver*, 358 U. S. 283. This history of wage and job competition is more than adequate to support the Union's claim of right to maintain as members the owner driver peddlers. Similarly, this history together with the experience of the Interstate Commerce Commission (*American Trucking Association v. United States*, 344 U. S. 298, 304-306) renders untenable the suggestion that such persons are not the "proper subject of unionization" (R. 48).

Divestiture and dissolution precedent is patently inapposite to this case. A union card is not a stock certificate and a trade union is not a commercial monopoly. Although both a union card and a stock certificate are printed on paper, there are no further similarities between the two. Citation of divestiture authorities cannot change this. Since the interests of a union member are in fact radically dissimilar from those of a stockholder, cases concerned with stock divestiture have no relevance to this cause.

In view of the foregoing it is submitted that the court below erred in directing the expulsion from Union membership of the owner driver peddlers.

ARGUMENT

I. THE COURT BELOW IN REQUIRING THE UNION TO EXPEL AND TO REFUSE TO READMIT ITS OWNER-DRIVER PEDDLER MEMBERS IMPROPERLY AND UNNECESSARILY INTERFERED WITH THE INTERNAL AFFAIRS OF THE UNION.

A. The relief granted by the Court below should be subjected to careful scrutiny by this Court in order to insure that the remedial, non-punitive function of Sherman Act civil decrees will be preserved.

An equity decree issued by a single judge requiring a labor union to expel from its membership certain owner-driver peddlers is here for review by this Court. Historically, "injunctive process was designed to deter, not to punish. * * * The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." *Hecht Company v. Bowles*, 321 U. S. 321, 329-330. The applicability of these concepts to civil cases arising under the Sherman Act is well settled.

In civil actions under the Sherman Act the courts "may not impose penalties in the guise of preventing future violations." *Hartford Empire Co. v. United States*, 323 U. S. 386, 409. Or as more recently stated, "Courts are not authorized in civil proceedings to punish violators, and relief must not be punitive." *United States v. Du Pont De Nemours Co.*, 366 U. S. 316, 326.

This Court has recognized an "obligation to intervene in this most significant [remedy] phase of the case when [it] concluded that there were inappropriate provisions in the decree." *United States v. United States Gypsum*

Co., 340 U. S. 76, 80. And because Sherman Act cases come here directly from the district courts, "the relief granted by a trial court in an anti-trust case . . . has always had the most careful scrutiny of this Court." *International Boxing Club v. United States*, 358 U. S. 242, 253.

Recognizing the remedial function of Sherman Act decrees and the amplitude of this Court's review of such decrees, we consider first the proper role of an anti-trust decree where, as here, both employees and non-employees are members of a union which has been found to have violated the Sherman Act.

I. It is not a proper function of a court, in anti-trust case, to determine the "proper subject[s] of Unionization."

The decree entered below requires the Union to "expel promptly from membership all grease peddlers" and to "refuse membership at any time in the future to any grease peddler." R. 551. Since this provision is typical of those presently sought in cases involving labor unions admitting non-employees to membership, the decree cannot be justified on the claim that it is required by the particular facts of this case. Indeed, the major premise of the Justice Department[1] and the court below[2] is that (R. 47):

[1] The Justice Department, as a matter of enforcement policy, seeks such decrees in cases involving "unions which are composed of mixed memberships, to-wit, both employers and employees." Address by Victor R. Hansen, Assistant Attorney General in charge of the Anti-Trust Division, delivered 31 January 30, 1958. Reported in 41 LRRM 91, 94. *See also United States v. Fish Smoking & Packing Corporation*, 183 F. Supp. 227 (S. D. N. Y.).

[2] In the court below the Justice Department argued (Reply Br. 2): "This defendant Union ought properly to be returned to status as a joint sole labor organization in which its sole concern is the interest of employee-members. * * * [The] Union has no legitimate interest in the representation of grease peddlers." *Also* Motion to Affirm, pp. 5-6.

> "... The membership of so-called 'independent contractors' in a labor union is not proper unless the purpose of the membership is to secure better wages and working conditions for all union members through the elimination of competition caused by the fact that the independent contractor and the union employees perform the same function."

Thereupon the court below held (R. 48):

> "Defendant peddlers and the defendant Union's employees in this case did not compete with each other. Therefore, the peddlers are not a labor group and are not the proper subject of unionization."

Based upon the premise that the owner-driver-peddlers were "not the proper subject of unionization" the court below felt free to import, in toto, the body of case law dealing with stock divestiture and corporate dissolution. At this juncture we consider only the major premise and will consider the applicability of divestiture and dissolution decrees to labor unions in a subsequent portion of this brief.

The court below in concluding that owner-driver-peddlers were not "proper subject[s] of unionization" necessarily assumed that it is a proper function of a court in a Sherman Act case to determine whether given individuals have a legitimate interest in union membership. This is not so.

The right to form, join and assist labor unions is a fundamental one and exists independently of legislative enactment. *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *Alabama Coal Utility Workers v. Consolidated Edison*, 309 U. S. 261, 263. Neither the Sherman Act nor any other federal statute purports to "deny to . . . a . . . labor organization the right to determine eligibility to its membership." *Steele v. Louisville & Nashville R. R.*

Co., 323 U. S. 192, 204. *See also Oliphant v. Locomotive Firemen*, 262 F. 2d 359 (C. A. 6), *cert. denied* 359 U. S. 935.

Congress in its direct regulation of labor unions has carefully refrained from prescribing the conditions of union membership. For example in Section 8 of the Labor Management Relations Act (Taft-Hartley), 29 U. S. C., Sec. 158, Congress expressly disclaimed any intention to "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Amendments to the Labor Management Reporting and Disclosure Act (Landrum Griffin), 29 U. S. C., Sec. 401, which would have established federal statutory regulations of Union admission standards were defeated. *See* Aaron, "The Labor Management Reporting and Disclosure Act of 1959," 73 Harv. L. Rev. 851, 860-861. And Section 4 of the Norris-LaGuardia Act, 29 U. S. C., Sec. 104, singles out for separate condemnation injunctions against "becoming or remaining a member of any labor organization. . . ."

These statutes, irrespective of any given applications, evidence a broad, continuing Congressional purpose to refrain from interference with union admission standards. In construing the Sherman Act and formulating decrees implementing that Act—which contains no reference to unions or union membership—the courts should not be oblivious to the intent of Congress manifested in statutes such as the Norris-LaGuardia Act. *Cf. Southern S. S. Co. v. NLRB*, 316 U. S. 31, 47. Confirmatory of this is the declaration in *United States v. Hutcheson*, 312 U. S. 219, 231, that the Sherman, Clayton and Norris-LaGuardia Acts must be read "as a harmonizing text of outlawry of labor conduct."

The suggestion that statutes such as the Norris-LaGuardia Act may be dismissed from consideration because no "labor dispute" exists is inadmissible. Section 6 of the Clayton Act, 15 U. S. C., Sec. 17, prohibits the courts

from viewing unions "or the members thereof" as unlawful combinations. To read "members" as including only "employee-members" is to adopt a mode of construction which has not been followed in almost a quarter of a century.

But perhaps it is more immediately significant to remember that a union does not lose its status as a labor organization or its statutory protection as a consequence of the fact it engaged in conduct violative of the Sherman Act. A finding that a union has violated the Sherman Act, of course, calls for the issuance of an order prohibiting not only the conduct found to be unlawful but related conduct as well. *E. g. Teamsters Local 167 v. United States*, 291 U. S. 293, 299. But such orders should not restrain a union "from doing the very things that the Clayton Act specifically permits unions to do." *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, 812. A finding of anti-trust violation does not justify the entry of a decree which "runs directly counter to the Clayton and the Norris-LaGuardia Act." *Ibid.*

The sum of this is that Congress has eschewed an intention to regulate the admission standards of labor organizations. The point has been made repeatedly in statutes relating particularly to unions and their activities. In expounding the Sherman Act, these Congressional bench marks should not be by-passed. Absent express Congressional warrant, and there is none, this Court should not recognize as a proper part of anti-trust policy the authority of the district courts to determine who is or isn't a "proper subject of unionization" (R. 48).

C. The Union's necessary interest in maintaining industry standards sanctions the membership of owner driver-peddlers.

This Court knows that for many years employers and owner-drivers have been in fact the subject of unioniza-

tion in the building and construction trades industry,[4] the service trades,[5] and the transportation industry.[6] The labor movement first learned in 1960[7] that unless active job or wage competition existed between such persons and employee members, such persons were not, according to the Justice Department, a proper subject of unionization.

The Union, of course, acknowledges that the record in this case does not conclusively demonstrate by affirmative evidence the existence of present and active job competition between owner-driver-peddlers and employee members. This according to the court below is fatal to the Union's cause (R. 48). In its preoccupation with present active competition the court below blinded itself both to material facts in the record and more importantly to the pages of industrial history. The record demonstrates that each of the eight processing plants involved in this case employs persons who are members of the Union (R. 53). Four of the processors employ persons who are members of the Union and who are engaged in the transportation of grease from restaurants and other institutions to the processors' plants (R. 59).

The contention made by the Justice Department that a union representing employee drivers has "no legitimate interest" (Gov. Reply Br., p. 10, filed below) in representing owner-driver-peddlers "who perform a job function identical to that of employee drivers disregards the realities of industrial life. Even without the guidance of the Norris-LaGuardia Act,[8] this Court acknowledged the [illegible]

[4] *Sykes v. Tile Layers Union*, 301 U. S. 408.

[5] *Bakers & Pastry Drivers v. Wohl*, 315 U. S. 769; *Milk Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91.

[6] *Local v. Oliver*, 352 U. S. 238.

[7] *United States v. Fish Smokers Trade Council*, 183 F. Supp. 227 (S. D. N. Y.).

[8] A case grows out of a "labor dispute" within the contemplation of the Norris-LaGuardia Act, which exists independently of an

disputable fact that employees "are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri City Council*, 257 U. S. 184, 209. *See also: Thornhill v. Alabama*, 310 U. S. 88, 103. From the earliest days of the International Brotherhood of Teamsters it has recognized the need to organize "persons who own, lease or operate a team or vehicle and perform work under the jurisdiction of [the] International Union" (Ex. B, Art. II, Sec. 2(b), p. 3, R. 39).

The owner-driver-peddler system is the product of employer efforts to avoid the payment of social security, unemployment compensation, workmen's compensation and similar benefits. Students of industrial relations accept this as a commonplace fact of labor history. Leiter, "The Teamsters Union," Bookman Associates, Inc., pp. 82-86, 148-154 (1957); Hill, "Teamsters and Transportation," American Council on Public Affairs, pp. 178-180 (1942). Considering its parentage, it is not surprising that serious economic ills beset the owner-driver-peddler system. *See American Trucking Assoc. v. United States*, 344 U. S. 298, 304-306. The point is rather dramatically underscored by a comparison of Finding of Fact 6 with a relatively recent study of labor problems in transportation. The court below in its Finding of Fact 6 stated (R. 57):

> "These self-employed peddlers have no established places of business; no employees, except an occasional loader; no capital investment except a small equity in a truck; no skill or special qualifications except the ability to load, unload and drive a truck. They drive from restaurant to restaurant picking up small amounts of waste grease in cans and, on the same day, transport and unload the entire collection to one

employee-employer controversy, if "persons," not employees, having a "direct or indirect" interest in the same industry are "interested" in the dispute. The dispute need only involve "maintaining . . . conditions of employment." 29 U. S. C. Sec. 113.

> of the processing companies. Their earnings represent the difference between the buy and sell price of the waste grease, diminished by the cost of maintaining and operating the truck."

Discussing persons so situated, one student has noted:

> "* * * The small owner-operator or 'gypsy' needs only enough capital to make a down payment on a truck and is free to offer his services at whatever rates he may be willing to accept. In order to protect his equity in his truck he tends, under competitive pressures, to progressively lower his rates until he is taking a bare subsistence for his own wages and is providing inadequate reserves for repairs, maintenance, or replacement. He works long hours, attempts to do his own repair work, often disregards health and safety requirements and load restrictions * * *." Gillingham, "The Teamsters Union on the West Coast," Institute of Industrial Relations, University of California, p. 35 (1956).

In light of the history of litigation before this Court involving union efforts to represent owner driver peddlers, the findings of the Interstate Commerce Commission (*American Trucking Assns., supra*) and the finding and conclusions of impartial students of the problem, it is submitted that the Union has a legitimate interest in retaining the membership of the owner-driver peddlers involved in this case.

To acknowledge the valid interest of a labor organization in retaining employers or owner-drivers as members is not to suggest that otherwise unlawful conduct is immunized. The court below properly enjoined those acts found to be unlawful as well as related acts. Provisions for visitation and inspection are contained in the decree, as are provisions requiring the submission of written re-

ports[9] (R. 76-77). Thus, both in substantive and procedural terms significant assurances of future compliance are contained in the decree entered below. The effectiveness of these provisions is in no way dependent upon the penal, forfeiture provisions which the Justice Department is defending in this Court.

In *Milkwagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, 94-96, this Court had occasion to recognize the threat to union standards inherent in the owner driver-peddler system. Recognizing the existence of such a threat to union standards, the contention "that the conditional abandonment of the vendor system . . . was . . . unrelated to labor's efforts to improve working conditions . . ." (311 U. S. at 98) was rejected. The possible success of any future effort to secure an abandonment of the peddler system involved in this case will be substantially diminished unless the Union retains as members the owner-driver-peddlers.

Similarly, an "elimination of price competition based on differences in labor standards is the objective of any national labor organization, but this effect on competition is not considered to be a violation of the anti-trust laws." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 503-504. This legitimate goal may be accomplished by regulation of "the hours in which business may be done" and such regulations "make a special appeal where, as here, they tend to shorten the working day . . ." *Board of Trade v. United States*, 246 U. S. 231, 241. The Union's effort to take wages out of competition by regulating hours of work obviously will be impeded by the loss of its owner-driver-peddler members.

The Union may reasonably hope that the owner-driver-peddlers, as members, would refrain from acting as strike

[9] Upon remand, the court below will be asked to strike this particular portion of the decree. *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 718n, 728

breakers during strikes by employee members. And to any event the possibility that as members the owner-driver peddlers would support such disputes might well provide the catalyst necessary to bring about a settlement of future negotiations on behalf of employee members of the union. Similarly insurance and other fraternal benefits are available to the owner-driver-peddlers as a consequence of their union membership.

The peddler system cannot be ignored by labor organizations in the transportation and service industries, at least not if such unions are to survive. Where, as here, violations of law have occurred an order running against the unlawful and related conduct will issue. But the existence of violations of law should not result in a forfeiture by equity decree of the unions' legitimate interests. *Cf. New York, N. H. & H. R. Co. v. Interstate Commerce Commission*, 200 U. S. 361, 404; *National Labor Relations Bd. v. Express Pub. Co.*, 312 U. S. 426, 435, 437. The decision below whether measured by a yardstick of precedent or history or equity is plainly wrong.

D. Divestiture and dissolution are plainly inapposite remedies in anti-trust cases involving labor organizations.

No serious student of the labor movement questions "the obvious fact that business corporations by virtue of their creation by the state and because of the nature and purpose of their activities, differ in many significant respects from unions . . . and accordingly owe different obligations to the federal and state governments." *United States v. White*, 322 U. S. 694, 697-698. *See also, Louisiana v. N. O. C. & C. P.*, 366 U. S. 293, 296. Even in cases involving corporate monopoly the harsh remedies of divestiture and dissolution are not preferred except in cases where the stock acquisition or merger is itself the violation. *See, e. g., United States v. Terminal R. Assoc.*, 224 U. S. 383, 409-411 (1912); *Associated Press v. United*

States, 326 U. S. 1, 24. The instances of corporate monopoly in which divestiture has been decreed are in no way similar to cases such as this one.

Surely a share of General Motors voting stock held by a company controlled by the DuPont family is not the legal or factual equivalent of a union card held by a man whose only asset is a small equity in a truck and whose only skill is the ability to drive his truck. Nor can a valid comparison be drawn between the membership of 35 to 45 owner driver-peddlers in a local labor union and a case in which "the powerful interests of James J. Hill and J. Pierpont Morgan coalesce to place in one controlling parent the stock of the Great Northern and Northern Pacific Railways, *Northern Secur. Co. v. United States*, 193 U. S. 197 . . ." *United States v. DuPont De Nemours & Co.*, 366 U. S. 316, 370 (dissenting opinion).

If the Justice Department is permitted to import divestiture and dissolution notions into cases involving labor organizations, the very structure of the labor movement necessarily becomes a subject of its enforcement policies. It is not the function of courts exercising anti-trust jurisdiction to run a business (*United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 163) and it should not be their function to determine the structure of labor organizations. Certainly the interest of a labor union in determining its membership is no less important than a corporation's right to select its customers. *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 728-729. Neither should be subject to forfeiture on account of a finding of anti-trust violation. "[T]he court may not create, as to the defendants, new duties the prescription of which is the function of Congress." *Hartford-Empire Co. v. United States*, 323 U. S. 386, 409.

Had concepts of divestiture been applied in *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797, presumably

Local 3 would have been "divested" of all of its members participating in the restraint of trade. The same must be said of the members participating in the restraints involved in *Teamsters Local 167 v. United States*, 291 U. S. 293. But this has not been and should not be the course of decision in this Court. "The labor of a human being is not a commodity or article of commerce" 29 U. S. C., Sec. 17; and the "members" of trade unions are not to "be held or construed to be illegal combinations . . ." 29 U. S. C., Sec. 52. The provisions of the judgment requiring the Union to expel and to refuse admittance to owner driver peddlers should be stricken.

II. ONLY FOUR OWNER DRIVER-PEDDLER MEMBERS WERE JOINED AS PARTIES AND IT WAS THEREFORE IMPROPER TO DECREE THE EXPULSION OF ALL OWNER DRIVER PEDDLERS

Only four of the 35 to 45 owner-driver peddlers subject to expulsion under the judgment of the Court, are parties to this proceeding (R. 56-57). The complaint does not allege that either the Union or the individual defendants were joined other than in their individual capacity (R. 2-3). Each owner-driver-peddler has a separate and distinct statutory[19] and contractual interest in his own membership. *Cf. International Association of Machinists v. Gonzales*, 356 U. S. 617, 618-619. This interest cannot be denied, consistently with the requirements of due process, absent a full and fair hearing. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232-233; *United States v. DuPont De Nemours & Co.*, 366 U. S. 316, 335.

Since anti-trust decrees are personal rather than *in rem* the suggestion that the owner-driver peddlers were free

[19] Title I of the Labor Management Reporting and Disclosure Act expressly guarantees to union members the right to a "full and fair hearing" prior to expulsion from membership. 29 U. S. C. 411 (a) (5).

to intervene (Motion to Affirm, p. 11) is beside the point. The individual owner-driver peddlers obviously have individual interests. Where, as here, the Justice Department seeks to extinguish such interests it should be required to join as parties those against whom it is proceeding. *Compare: Hughes v. United States*, 342 U. S. 353, 357-358. Thus, independently of the question of the character of the relief to be granted, it is submitted that the case should be remanded for the purpose of according a hearing to those against whom the judgment was issued.

CONCLUSION.

Labor organizations acting in combination with businessmen who are engaged in monopoly practices are subject to appropriate remedial orders. But the fact of violation does not and should not operate as a *pro tanto* repeal of the Clayton and Norris LaGuardia Acts. Nor does the fact of violation confer upon the Justice Department authority to act as arbiter of the membership standards of labor organizations or of the "proper subject[s] of unionization."

For the foregoing reasons it is respectfully submitted that those portions of the judgment below relating to the membership of owner-driver peddlers be stricken from the decree.

Respectfully submitted.

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APPENDIX A

Sherman Anti Trust, Sections 1 and 2, U. S. C. Title 15, Sections 1 and 2.

§ 1. *Trusts, etc., in restraint of trade, illegal; exception as to resale price agreements, penalty.*

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. *Provided*, That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of this description are lawful as applied to interstate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be deemed a method of competition under section 45 of this title; *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage

in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693."

"4. *Jurisdiction of courts; duty of district attorneys; procedure.*

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. July 2, 1890, c. 647, § 4, 26 Stat. 209; March 3, 1911, c. 231, § 291, 36 Stat. 1167."

Clayton Act, Sections 6 and 20, 15 U. S. C., Section 17, and 29 U. S. C., Section 52.

"17. *Antitrust laws not applicable to labor organizations.*

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the

anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws. Oct. 15, 1914, c. 323, § 6, 38 Stat. 731."

"52. *Statutory restriction of injunctive relief.*

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working;

or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. Oct. 15, 1914, c. 323, § 20, 38 Stat. 738."

Norris-LaGuardia Act, Section 4, 29 U. S. C., Section 104:

"104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interest in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. March 23, 1932, c. 90, § 4, 47 Stat. 70."

National Labor Relations Act, Section 8 (b) (1); 29 U. S. C., Section 158 (b) (1):

"(b) It shall be an unfair labor practice for a labor organization or its agents

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 38

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 40–55) is reported at 196 F. Supp. 12.

JURISDICTION

The judgment of the district court was entered on July 14, 1961 (R. 56). A notice of appeal was filed July 26, 1961 (R. 78); a supplementary notice of appeal was filed August 16, 1961; and this Court noted probable jurisdiction on January 15, 1962 (R. 82; 368 U.S. 965). The jurisdiction of this Court rests on Section 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U.S.C. 29.

QUESTIONS PRESENTED

Upon a stipulated record showing admitted violations of the Sherman Act by a Union acting in conjunction with its independent contractor (grease peddler) members, the district court found that (1) the grease peddlers and employee members of the Union were not in competition, (2) there was no relationship between the commercial activity of grease peddlers and the working conditions of employee members of the Union, (3) the grease peddlers joined the Union either to restrain trade or because they were forced to join by the conspirators and (4) "union" affiliation was the means used to effect and camouflage the activities of the unlawful combination and to hold the participants in combination. The court concluded that "the most effective, if not the only, means" of assuring compliance with its decree was to require the Union to expel and exclude the peddlers from its membership.

The following questions are presented:

1. Whether the district court exceeded its power in ordering the Union to expel its peddler members.

2. Whether the court's order requiring the Union to expel all peddler members deprived those members who were not defendants of statutory and contractual rights to membership without a hearing, violation of due process.

STATUTES INVOLVED

The relevant portions of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, *et seq.*; the Clayton Act, 38 Stat. 730, as amended, 15 U.S.C. 12, *et seq.*, 29

U.S.C. 52, the Norris-La Guardia Act, 47 Stat. 70, as amended; 29 U.S.C. 101, *et seq.*, and the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. 151, *et seq.*, are set forth in the Appendix, *infra*, pp. 37–42.

STATEMENT

I. THE COMPLAINT, STIPULATION OF FACTS AND DISTRICT COURT JUDGMENT

The complaint (R. 1–12) filed on May 27, 1959, charged the Los Angeles Meat and Provision Drivers Union, Local 626; Meyer Singer, business representative of Local 626; and Lee Taylor, Hubert Brandt, Walter Klein and Harold Carlis, grease peddler members of a subdivision of Local 626 known as "626–B," with conspiring to restrain foreign trade and commerce in yellow grease, in violation of Section 1 of the Sherman Act. All other peddler members of the Union as well as certain processors of grease were named co-conspirators, but not defendants (R. 3).

According to the complaint, the grease peddlers were engaged in the business of buying restaurant grease from hotels, restaurants and institutions in the Los Angeles area, and reselling to processors in the same area. Processors extracted moisture and solid impurities from the restaurant grease, by various processes, and thereby converted it into yellow grease. A substantial part of the yellow grease so produced was sold to buyers in foreign countries and to buyers in California for prompt shipment to foreign countries (R. 20, Stip. 18).

The complaint charged, *inter alia*, that from October 1954 to May 27, 1959, the grease peddlers and

the Union (and co-conspirator processors) had fixed the prices to be paid by peddlers to their sources of restaurant grease and the prices at which peddlers could sell restaurant grease; had allocated among the peddlers the persons from whom they could buy and to whom they could sell; had required processors to buy only from "Union" peddlers; and had enforced these restraints by boycotts, picketing and strikes and threats thereof.

The defendants filed an answer (R. 12–16) generally denying the allegations of the complaint. Thereafter, the parties agreed to a stipulation of facts (R. 16–35) which included an admission of all the charges in the complaint and the ultimate conclusion that defendants had unlawfully combined and conspired in unreasonable restraint of foreign commerce. The parties further stipulated (1) that there were "no issues of fact remaining to be litigated upon trial"; (2) that the government was entitled to an injunction against the fixing of buying or selling prices, the limiting of the number of peddlers, allocating of peddlers' customers or peddlers' sources for restaurant grease, or allocating of the business of the processors; and (3) that the "sole remaining issue" was whether the court should order the termination of grease peddler membership in the Union, as prayed in the complaint (R. 34–35).

The case was submitted to the district court upon the pleadings and stipulation, and oral argument was had. The court made findings identical to the stipulated facts (R. 56–73) and in a lengthy opinion (R. 40–55) upheld the government's claim that the union should be required to expel the grease peddlers. The

court's judgment, in addition to providing the injunctive relief to which the defendants had consented, also ordered Local 626 to expel from membership all grease peddlers, to refuse membership at any time in the future to any grease peddlers and to expel from membership any member who became a grease peddler (R. 75). The decree defined "grease peddler" as a person who is a "self employed entrepreneur" (R. 74), and the court stated in its opinion (R. 55), that grease peddlers who "became bona-fide employees" may become union members.

II. THE FINDINGS OF THE DISTRICT COURT

A. *The commercial restraints.*

Appellant Union, through its business representative, appellant Singer, and other representatives, offered the grease peddlers a plan to increase their profits by increasing the margin between the prices they paid restaurants, hotels and other institutions for grease and the prices at which they sold to processors (R. 22, Stip. 26).[1] The plan contemplated preventing peddlers from soliciting the accounts of other peddlers, requiring processors to deal only with Union grease peddlers, and forcing out of business any grease peddlers who did not join the Union (*ibid.*).

The plan was carried out. From November 1954 to 1957 Singer set the prices at which the peddlers would sell, and the processors agreed to those prices (R. 24,

[1] "Stip." refers to the basic stipulation of facts (R. 16–35) which as noted above, is identical with the court's findings (R. 56–73). The number refers to the pertinent paragraph of the stipulation.

Stip. 32). In August 1958, Singer set one cent a pound as the top price any peddler would pay for restaurant grease, a substantial reduction of the prevailing price (R. 27, Stip. 45), and a "policing" committee of three grease peddlers was appointed (*ibid.*). In September 1958, processors asked the "committee" to reduce the price to be paid by processors to peddlers; it refused, but after an appeal to Singer, he decided that this price was to be reduced by ¾ cent per pound (R. 28, Stip. 49–50). Prices paid by processors were accordingly reduced, and continued at the reduced rate (*ibid.*). At the same meeting Singer overruled objections by some peddlers to the one cent per pound limit on prices to be paid restaurants (R. 29, Stip. 51).

Under instruction from Singer, during the entire period from October 1954 to May 1959, the grease peddlers agreed to refrain from buying from, or soliciting the accounts of other peddlers (R. 24, Stip. 33). In the case of disputes, Singer allocated accounts and territories (R. 24, Stip. 34, 35); in the case of violation, peddlers were fined or suspended, and if suspended, were prohibited and prevented from selling grease to processors (*ibid.*).

The business of the processors was also allocated. Star (owned by a Union member) (R. 33, Stip. 69) became a processor in July 1958, took customers from processor B & H, and drove up the processors' buying prices (R. 27, Stip. 44). In August, Singer cut those prices back down, and instructed the peddlers to stop selling to Peterson, another processor (R. 27, Stip. 45). When most of the peddlers transferred

their business from Peterson to Washington. Still another processor, rather than to Star, the latter appealed to Singer and the Union to have more peddlers sell to Star (R. 28, Stip. 47). During the same period Singer asked processor B & H to sell 80,000 pounds of grease for Star, which was having trouble selling (R. 28, Stip. 48); B & H paid part of the cost of a trip to Hawaii which Star's owner made to appeal to Singer to reduce prices paid by processors to the peddlers (R. 28, Stip. 49); and Singer represented Star at a meeting he called to split the peddlers' business evenly among B & H, Washington, and Star—by transferring accounts from B & H and Washington to Star, which had been in business less than 3½ months (R. 29, Stip. 53, 54). The peddlers switched to Star upon instruction of the Union "committee" (R. 30, Stip. 55).

B. *Relationship of the grease peddlers to Local 626.*

1. Most of the grease peddlers joined the Union because it offered a means of fixing prices and allocating business; others were forced in. From the beginning the Union's plan included "fore[ing] out of business" all who did not join the Union (R. 22, Stip. 26), and "everyone would have to go along or be put out of business by the Union" (R. 23, Stip. 27). In October 1954, a majority of the grease peddlers joined the Union and agreed to the program as outlined (R. 23, Stip. 28). At about the same time, upon advice from Singer that processors who purchased from non-Union peddlers were to be boycotted and picketed, two processors agreed that they would not purchase grease from non-Union peddlers (R. 23, Stip. 29), thereby setting into motion the contemplated coercion of ped-

dlers into Union membership. In February 1955, under pressure of a strike and picket line, a third processor agreed to purchase no more grease from non-Union peddlers (R. 25–26, Stip. 37). In March 1955, Schrader, a processor of fish oils, in response to a threat of "union trouble," complied with a demand to stop buying grease from two non-Union peddlers (R. 25, Stip. 38). Galerkin, a non-Union peddler, joined the Union so that he would have the opportunity to sell to processors (R. 25–26, Stip. 39). In November 1955, and January 1956, respectively, picket lines were established around two more processors who were then purchasing from non-Union peddlers (R. 26, Stip. 40, 41). When one processor bought grease from non-Union peddlers in February 1959, the Union arranged to have the trucks of the non-Union peddlers trailed, and the non-Union peddlers were subjected to harassment and threats of physical injury (R. 30–31, Stip. 58).

2. The record showed no joint activities and only the most superficial relationship between the grease peddlers (Local 626–B) and the employees' union (Local 626). From October 1954 to May 27, 1959 (when the complaint was filed), there were about 35 to 45 grease peddlers in the Union, Local 626, which comprised some 2,400 members, mostly truck drivers (R. 17, Stip. 1). From April 1955 the grease peddlers held their membership in a "subdivision" of the Union—Local 626–B (*ibid.*). During the entire period from October 1954 to May 1959, they "were established and recognized by defendant Union as a group or segment separate and distinct from

employee members"; and their meetings, although called by defendant Singer or a Union officer, were always held separately from meetings of employee members (R. 23, Stip. 30). Singer, a Union business representative, was "assigned" by the Union "to work with and to conduct the affairs of the grease peddler segment" (R. 24, Stip. 31). Aside from Singer, its affairs were conducted by a committee comprised of grease peddlers[2] appointed in August 1958 to assist in "policing, enforcing and carrying out the program to suppress and eliminate competition" (R. 27, Stip. 45).

C. *Independence of the grease peddlers.*

1. The grease peddlers were stipulated to be independent businessmen: not employees (R. 17, Stip. 5). While their only "skill or special qualifications" were "the ability to load, unload and drive a truck" (R. 17–18, Stip. 6), they rented or owned their own trucks (R. 17, Stip. 5), and bought and sold restaurant grease solely for their own accounts (*ibid.*). They bought primarily from smaller restaurants, hotels and institutions, driving from place to place, buying small amounts in cans and selling the day's collection to a processor (R. 17–18, 19–20, Stip. 5, 6, 7, 16).

Their gross incomes were "the difference between the buy and sell price," and they bore the cost of owning or renting a truck, the cost of employing "an occasional loader," and the cost of "maintaining and operating" the truck (R. 17–18, Stip. 6).

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[2] Defendants Taylor, Brandt and Klein (Klein was replaced by defendant Carlis early in 1959) (R. 27, Stip. 45).

There was no evidence that the peddlers were in any way subject to the control of the processors—either as to routes, territories, customers, prices, or hours, or that there was any financial control, through indebtedness or otherwise.

2. There was no evidence that there was any past or threatened effect upon wages or working conditions of employee-truck drivers as a result of the grease peddlers' activities. Certain of the processors purchased some of their supply of grease directly from hotels, restaurants and institutions while acquiring meat waste and packing and poultry house by-products. In making such purchases these processors used employee-truck driver members of Local 626 to pick up and transport the grease (R. 19–20, Stip. 14–16). The peddlers and the direct buying processors had different sources of supply and different classes of customers. Thus, the peddlers acquired grease from the smaller establishments where the supply was relatively small or irregular in availability. When buying directly, the processors made collections from larger establishments (R. 20, Stip. 16). For the most part, the peddlers dealt with processors whose sole business was the reduction of restaurant grease, for resale (R. 18–19, Stip. 10–15). In 1958, four such processors produced 82 percent of the yellow grease in the area (R. 5, Comp. ¶20; R. 34), and they bought 80 percent of their restaurant grease from peddlers (R. 6, Comp. ¶23; R. 34). The processors who purchased grease from restaurants directly, and had done so for many years, engaged in other activities besides grease processing (R. 19–

20, Stip. 15–16); as noted, their employee-drivers collected several products including grease (R. 19–20, Stip. 16).

The record contains no indication of any economic interrelation between employee-truck drivers and the peddlers. Indeed, prices of yellow grease fell during 1952 to 1954 to less than half their earlier level, and this caused "intensive competition" among the peddlers (R. 22, Stip. 25), but no evidence was offered to show that this had any effect whatever upon the employee-drivers of any of the processors.

Appellants offered no evidence to show the gross or net earnings of the peddlers or the hours they worked, or that employee-truck drivers feared or had reason to fear for their own wages or working conditions as a result of the grease peddlers. It was stipulated that no processors had ever used or threatened to use peddlers as strikebreakers (R. 32, Stip. 65); and that no processor had ever substituted peddlers for employee-drivers in acquiring restaurant grease, or threatened to do so (R. 32, Stip. 66).[3]

In sum, all of the evidence was consistent with the statement of defendant Singer that the purpose of the Union was to improve the lot of "peddlers and the processors buying from peddlers" (R. 27–28, Stip. 46).

D. *Use of the Union as an instrument of the conspiracy, and the appellants' proclivities.*

1. Stipulated facts showed that the appellants used the Union ruthlessly and often in devious ways

[3] Compare the original contentions of appellants, footnote 8, p. 28, *infra*.

to restrain trade, and they had not abandoned their objectives even after the present case was filed. From the first they planned to force out of business any peddler who refused to join with them (R. 22, 23, Stip. 26, 27). A processor was driven out of business because Singer "did not want [the processor] in the grease business" (R. 26, Stip. 42); processors were "asked" to pay an initiation fee for a peddler (R. 25–26, Stip. 39), and to "lend" money to a poor credit risk who was joining the Union 626–B (R. 26–27, Stip. 43); Singer both arranged to sell grease for one of the processors, and arranged to get him one-third of the peddlers' product (R. 29, Stip. 54; R. 28, Stip. 48); peddlers were "suspended" for soliciting other peddlers' accounts, or for paying more than one cent a pound to restaurants—which meant they were out of business during the "suspension" (R. 30, Stip. 56); a strike was called against a processor on trumped-up grounds (R. 30–31, Stip. 58, 59, 60); "non-union" peddlers were followed and subjected to "harassment and threats of physical injury" (R. 30–31, Stip. 58).

The filing of a companion indictment * to this action brought threats against a processor who had testified about the activities of Local 626–B before a Senate Committee (R. 31, 32, Stip. 61, 62, 63). A trade association (Los Angeles Grease Buyers Association) was dissolved because it could not provide the means of doing "for the peddlers what the Union could do,"

* On the date the complaint was filed, a companion criminal indictment was brought against the same defendants (with the exception of Carlis) who thereafter pleaded *nolo contendere* (R. 31, 32, Stip. 61, 64).

without fear of legal prosecution (R. 24–25, Stip. 36). Finally, the stipulation (R. 34) admitted the charge in the complaint that the defendants conspired "[t]o conceal and suppress evidence of the conspiracy alleged by pressure or threats or other means" (R. 9; Comp. 27k).

2. The grease peddlers were able to employ weapons not ordinarily available to a trade association, because of their union affiliation: they called "strikes" (R. 25, Stip. 37; R. 26, Stip. 40; R. 31, Stip. 59), "picketed" (*ibid.* and R. 26, Stip. 41) and otherwise utilized their apparent affiliation with the labor movement to threaten "union trouble" (R. 25, Stip. 38), "labor trouble" (R. 30, Stip. 57) and trouble with "other unions" (R. 32, Stip. 62, 63).

The relationship provided financial strength ("plenty of money," R. 29, Stip. 51), an opportunity to bring pressure on a processor through other business relationships (R. 26, Stip. 42) and a chance to claim a processor had no "labor contract" and thus to conceal the real purpose of a "strike" (R. 31, Stip. 60).

After the filing of the present case, the Union submitted to the trial court in the companion criminal case (in connection with sentencing), statements signed by numerous peddlers in 626–B "stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease and paying too much for restaurant grease. * * *. [and] that *defendant Union is the only organ-*

ization capable of accomplishing these results for them" (R. 32–33, Stip. 67) (emphasis supplied).

III. THE OPINION OF THE DISTRICT COURT

The district court rejected as "pointless" appellants' argument that mere membership of peddlers in the Union "does not transform the union into an illegal combination;" in view of the specific admission that the grease peddlers and the union had "unlawfully combined and conspired" in violation of the Sherman Act (R. 43). The court held (R. 44) that the issue was not whether independent contractors "can join, or properly be coerced to join, a union" as "impliedly sanction[ed]" by *Bakery Drivers' Local* v. *Wohl*, 315 U.S. 769, and *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91. It found that the circumstances of the case disclosed a misalliance between business and labor in restraint of trade like those in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797; *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143; and *United States* v. *Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227 (S.D.N.Y.). The court stated (R. 47–48) that the key distinction between the above groups of cases is whether "the purpose of the membership is to secure better wages and working conditions for all union members" or, as the district court in the *Fish Smokers'* case said, "a conspiracy masquerading as a labor agreement in order to restrain competition" (183 F. Supp. at 234). Having found from the admitted facts that there was "no competition between [the grease peddler and

employee driver] groups because each is engaged in a different line of work" (R. 45; see R. 44, 48); that the peddlers were "not a labor group" and "not the proper subject of unionization" (R. 48); that the purpose of taking the peddlers into the Union was to raise the peddlers' income and to permit the Union, the peddlers and the processors "to put together a combination to control the business of buying and selling waste grease" (R. 48); and that there were no "labor disputes", the court below concluded that neither Section 6 of the Clayton Act, nor Section 4(b) of the Norris-La Guardia Act precluded the issuance of an injunction requiring the Union to expel the grease peddlers (R. 48–51).

Upon the further findings that "only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition," and that, as in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, "[t]he proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future," the court concluded that a decree terminating grease peddler membership in the Union "appears to be the most effective, if not the only, means of preventing a recurrence of defendants' unlawful activities" (R. 55).

SUMMARY OF ARGUMENT

Looking to realities rather than form, Local 626–B is a trade association of independent businessmen. Under familiar principles of equity, the court had power to dissolve this association, for it was created

for illegal purposes, it employed coercion to bring members into the combination, it displayed proclivities for evading the normal processes of the law, and its businessmen members continued to regard it as a means to unlawful ends even after this suit was brought.

The fact that 626–B was part of a trade union, Local 626, does not alter the power of the court to order its dissolution. The presence of the independent businessmen in the Union flowed not from a legitimate desire to better or protect the working conditions of the Union's employee-driver members, but was rather a necessary part of the illegal conspiracy to better the conditions of the businessmen-peddlers and some of the processors. By the same token, there was no trade union interest protected by the labor laws which could even arguably overcome the district court finding that disassociation was necessary to effect compliance with the Sherman Act. Neither the Clayton Act, the Norris-LaGuardia Act, nor the National Labor Relations Act insulates a trade association which combines with and within a labor union to restrain trade from the equity court's accepted power to dissolve an illegal combination. Nor does the First Amendment justify the continued existence of an unlawful combination created for purposes which violate the antitrust laws and held together by unlawful coercion.

There is no need for further hearings before the district court to consider the interests of peddlers who were not parties to the case. The court's order requiring the Union to expel its businessmen-

peddlers from membership was issued after affording all interested parties a full hearing. The non-defendant peddlers were represented by the Union which vigorously contended for their rights of membership. In any event, the order for dissolution of the combination accords with the frequent practice in antitrust cases where the court may formulate relief broad enough to prevent the offenders from violating the Act even though the order affects the rights of persons not made parties to the suit. See *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 365.

ARGUMENT

The record reveals a combination of businessmen (grease peddlers) calling itself "Local 626–B," acting together with the Union (Local 626) and the grease processors, for the purpose of fixing prices of waste grease and allocating the business, concededly in violation of Section 1 of the Sherman Act. The conspiracy rested upon a scheme to persuade some, and to force other, independent businessmen into Union membership. Once in, they became a separately-operated subdivision of the Union, and pursued the plan to restrain trade, deriving from association with the 2400-man Union Local the power to call a dissenter anti-Union, to threaten "Union trouble" and to misuse labor's traditional weapons, strikes and picketing, in execution of the conspiracy.

It is conceded that neither the Norris-La Guardia Act, the Clayton Act, nor any other of the laws dealing with organized labor precludes the issuance of an

injunction enjoining the combination from continuing to restrain trade. Moreover, it is clear that a court in appropriate circumstances may order the dissolution of a trade association of businessmen where the association and its members have combined to violate the antitrust laws. The narrow question presented here is whether the same combination of businessmen may be dissolved where it takes the form of a subdivision of a labor union local and where the court finds that the businessmen and the union's employees do "not compete with each other"; and that the businessmen were taken into the union "for the purpose of raising their income and enabling the Union * * * and the [businessmen] to put together a combination * * * restraining foreign commerce * * * in violation of the Sherman Act" (R. 48).[5] We submit that under the circumstances the court acted within its power in dissolving the ties which bound these businessmen together, and which also bound them to the Union, when it concluded there would be no other effective way of bringing to an end the restraints upon trade. Neither the labor laws nor the First Amendment precludes a court of equity from enjoining continuation of this misalliance which has been

[5] We emphasize that the narrow question presented on the record of this case is to be distinguished from the more difficult questions which would be raised by a court order requiring termination of union membership under other circumstances: for example, where violators of the antitrust laws are independent contractor members who were in competition with other union members (see R. 44). And no challenge is presented here to the right of the Union to retain or admit employee members, under any circumstances.

both the combination itself and its major instrumentality.

A. *Under familiar principles of antitrust law the court properly ordered the Union to expel the peddler members.*

Local 626-B is an association of independent businessmen (R. 16, 17, Stip. 5). It has always met separately and apart from Local 626 (R. 23-24, Stip. 30). Its activities—price fixing and allocation of markets—are those indigenous to an unlawful association of businessmen rather than a labor union, and there is no evidence it makes any useful contribution to the trade-union movement.

Local 626-B was formed in response to a need for a device to give a color of legality to a scheme to fix prices and divide up the business. Those peddlers who did not willingly accede to the scheme were to be forced into the combination (Statement, *supra*, pp. 7-8). Its conduct was ruthless, and marked by misrepresentation, threats of physical violence, defiance of the processes of law and order, and concealment of evidence (Statement, *supra*, pp. 11-13). Even after this case was brought, the peddler members looked upon the Union as the necessary means to "regulate" their activities—including "paying too much for restaurant grease" (R. 33, Stip. 67). It was because of these repeated illegal acts that the court below found it necessary to include in the decree a provision designed to break up this illegal combination. As this court has said, "[t]he pattern of past conduct is not easily forsaken. Where the

proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct." *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 186.

The stipulated facts in this case provide ample grounds for exercise of the power of the court to decree dissolution of an illegal combination. They make the need for such relief clear, and the court had both the power and the duty to shape a decree that would be effective to prevent continued and future violations of the law. *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88. This Court has many times upheld exercise of this power to dissolve companies found to have monopolized interstate commerce (*International Boxing Club* v. *United States*, 358 U.S. 242, 253; *United States* v. *Standard Oil Co.*, 221 U.S. 1; *United States* v. *American Tobacco Co.*, 221 U.S. 106); to divest or divorce segments of a business where operation had resulted in monopolization or restraint of trade (*United States* v. *du Pont & Co.*, 366 U.S. 316; *United States* v. *National Lead Co.*, 332 U.S. 319; *United States* v. *Paramount Pictures*, 334 U.S. 131); to prohibit the voting of stock acquired pursuant to a conspiracy in restraint of trade (*Northern Securities Co.* v. *United States*, 193 U.S. 197); and to prohibit individuals from being officers of competing corporations (*United States* v. *Crescent Amusement Co.*, 323 U.S. 173).

Indeed, it is well accepted that a court of equity has power to order the dissolution of an unincorporated association formed or used as a combination in re-

straint of interstate commerce. Such orders have been frequently directed against trade associations. See *Hartford-Empire Company* v. *United States*, 323 U.S. 386, 428, and the final decrees in *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290 (final decree printed in 1 Decrees and Judgments in Civil Federal Anti-Trust Cases 6); *United States* v. *Nome Retail Grocerymen's Ass'n*, 1 Degrees and Judgments in Civil Federal Anti-Trust Cases 83; *United States* v. *United Liquor Corp.*, 149 F. Supp. 609 (W.D. Tenn.), affirmed, 352 U.S. 991 (final decree reprinted in Jur. St. No. 637, O.T. 1956, see p. 23a, par. VII). The substantial number of consent decrees dissolving associations of businessmen further demonstrates that the court's power to order such relief is well recognized.[6]

In the *Hartford-Empire* case, this Court ordered dissolution of an association, and enjoined formation of "any such trade association" except on a showing after a five-year period that its purposes and activi-

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[6] There are 24 consent decrees calling for dissolution of trade associations listed in 4 Decrees and Judgments in Civil Federal Anti-Trust Cases p. V–VII, which cover the period from July 2, 1890 through January 1, 1949. There are 17 additional consent decrees ordering dissolution of trade associations listed in CCH Trade Regul. Repr., ¶ 82,784, 16 of which were entered since 1952.

Other consent decrees in which unincorporated associations have been ordered dissolved include *United States* v. *Stern*, 1952 Trade Cases ¶ 67,319 (a partnership), *United States* v. *Barbers' Supply Dealers Ass'n*, 2 Decrees and Judgments in Civil Federal Anti-Trust Cases 983 ("neighborhood clubs"), and *United States* v. *Electrical Apparatus Export Ass'n*, 4 Decrees and Judgments in Civil Federal Anti-Trust Cases 5049 (a Webb-Pomerene association).

ties would not violate the law. The lower court had severely limited the association's activities, but this Court went further and directed that it be dissolved. The Court stated (323 U.S. 386 at 428):

> We think the injunction as respects the association, while leaving it in existence, practically destroys its functioning, even as an innocent trade association for what would have been held lawful ends. The association has undoubtedly been an important instrument of restraint and monopoly. It may be made such again, and detection and prevention and punishment for such resumptions of violations of law may be difficult if not impossible. In light of the record, we think it better to order its dissolution * * *.

The fact that an association of peddlers, indistinguishable in purpose and actual operation from a traditional trade association, calls itself a "labor union" and becomes in form a subdivision of a local union does not bar the granting of the necessary relief of dissolution of the combination. In antitrust cases courts are guided by economic reality "without regard to the garb in which * * * acts were clothed," and must guard against the "possibility of frustrating that policy by resorting to any disguise or subterfuge of form." *United States* v. *American Tobacco Co.*, 221 U.S. 106, 181; see *American Tobacco Co.* v. *United States*, 328 U.S. 781, 809; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593, 598.

Moreover, the alliance of the grease peddlers (Local 626–B) with the Union (Local 626) emphasizes the

need for the relief decreed by the court. As the district court found, the proclivities of the defendants require that the power of such an alliance be placed beyond their reach (R. 55). The grease peddlers misused their "union" status, through "strikes," picketing, sham claims of no "labor contract," and threats of "labor trouble" or "union trouble," to carry out their unlawful conspiracy (Statement, *supra*, pp. 13–14). As the district court noted, "only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition in the purchase and sale of waste grease, and to drive several processors out of business" (R. 55). At the time of the hearing below, there were only two processors left in the Los Angeles area who bought regularly from peddlers; one is owned by a member of Local 626, and a partner in the other belongs to Local 626; and both have confined their purchases to "Union" peddlers (R. 33, Stip. 69, 70, 71).

The decision of this Court in *Allen Bradley v. Local Union No. 3*, 325 U.S. 797, emphasizes the need for the separation of the grease peddlers from the Union. The Court there said (*id.* at 810):

> Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. * * *

The district court had authority to order the Union to expel the businessmen-peddlers and, in the light of the record in this case, was fully warranted in con-

cluding that this was the only effective method of terminating the illegal practices and preventing their recurrence.

B. *The Court's order was not precluded by the policies of the labor laws, or by the First Amendment.*

1. The Norris-La Guardia Act, 29 U.S.C. 104, does not prohibit the relief decreed below. That Act applies only to cases "involving or growing out of any labor dispute." This case did not grow out of a labor dispute. *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143, is directly in point. There an association of fishermen, operating under the guise of a labor union, boycotted a processor for refusing to agree to buy fish exclusively from union fishermen. This Court held Norris-La Guardia inapplicable, saying (at p. 145):

> That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a "controversy concerning terms or conditions of employment, or concerning the association * * * of persons * * * seeking to arrange terms or conditions of employment" calls for no extended discussion. This definition and the stated public policy of the Act—aid to "the individual unorganized worker * * * commonly helpless * * * to obtain acceptable terms and conditions of employment"; and protection of the worker "from the interference, restraint or coercion of employers of labor"—make it clear that the attention of Congress was focused upon disputes affecting the employer-employee relationship, and that

> the [Norris-La Guardia] Act was not intended to have application to disputes over the sale of commodities.

See *American Medical Ass'n* v. *United States*, 317 U.S. 519, 533-536; *Bakery Drivers Union* v. *Wagshal*, 333 U.S. 437, 443; *United States* v. *Women's Sportswear Ass'n*, 336 U.S. 460, 463-464.

Indeed, appellants' concession that an injunction could properly issue in this case (R. 34) points up the inapplicability of the Norris-La Guardia Act as a bar to expulsion of the businessmen.

2. Appellants' argument derives no support from the labor exemptions of the Clayton Act, Sections 6 and 20, 15 U.S.C. 17 and 29 U.S.C. 52. The object of these provisions is to protect the rights of employees to organize for mutual help. This Court has emphasized the distinction between employees and independent entrepreneurs, and made it clear that no labor law policy or statute immunizes combinations of businessmen and unions which seek to restrain trade. *Columbia River Packers Ass'n, Inc.* v. *Hinton*, *supra*, 315 U.S. 143; *Allen-Bradley Co.* v. *Local Union No. 3*, *supra*, 325 U.S. 797. The only effect of the court's order is to require the Union to expel the businessmen from membership.

3. There is no basis for appellants' reliance upon the proviso of Section 8(b)(1) of the National Labor Relations Act, 29 U.S.C. 158(b)(1), "That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." This section is not relevant to the problem facing the

court, for it merely qualifies the limitations which that Act places upon union restraint or coercion of employees. The general legal right of the union to determine its own membership is not challenged here; and in any event no doctrine of common law or statute gives a union the right to serve as the nexus of an association of businessmen beyond reach of an equity court. *Giboney* v. *Empire Storage and Ice Co.*, 336 U.S. 490, discussed *infra*, pp. 30-31.

It is also clear that Congress did nothing to change the law in this regard in the Labor-Management Reporting and Disclosure Act, 73 Stat. 519, 29 U.S.C. (Supp. II) 401. No underlying right was broadened by Congress' failure to change the proviso in 8(b)(1); nor does this congressional inaction demonstrate any purpose to limit the power of an equity court, as the appellants suggest (Br. 11).

The National Labor Relations Act recognizes that independent businessmen, no matter how small, are not to be treated indiscriminately as a single group with employees, and this is entirely consistent with the declaration in Section 1 (29 U.S.C. 151) that it is the policy of the United States to protect "the exercise by worker of full freedom of association, [and] self-organization * * *." That declaration is keyed to references to the "right of *employees* to organize," and its stated objective is to restore "equality of bargaining power between employers and employees" (*ibid.*) (emphasis supplied). To this end, Section 7, 29 U.S.C. 157, guarantees to *employees* "the right to self-organization, to form, join, or assist labor organizations," defining "employees" so as to exclude in-

dependent contractors, Section 2(3), 29 U.S.C. 152(3).

Moreover, Section 8(b)(4)(A) makes it an unfair labor practice to force or coerce any self-employed person to join any labor organization. While we recognize that independent entrepreneurs have the right to join labor unions, we contend that this right is not of such character as to be beyond reach of an equity court decree awarding necessary relief in an antitrust case. In this connection it is significant that where the labor laws speak of independent contractors they are oriented towards protecting independent contractors *from* unions rather than towards promoting alliances of the type now before the Court.

4. Appellants virtually concede (Br. 13) that there is no basis in the record for their argument (Br. 12-17) that the Union has a "necessary interest in maintaining industry standards [which] sanctions the membership of owner-driver peddlers." Instead, they rely on other cases in which the activities of independent businessmen were found to have affected the economic interests of employee members who performed similar job functions.[7] However, those cases

[7] Cases such as *Local 24* v. *Oliver*, 358 U.S. 283; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and *Bakery & Pastry Drivers* v. *Wohl*, 315 U.S. 769, are not relevant here. For this Court has never held, in these cases or any other, that independent businessmen may, with impunity from Sherman Act sanctions, join with a labor union to fix prices or allocate markets on goods in commerce even though (1) the businessmen perform economic functions similar to the union's employee members and (2) the union sought a legitimate labor objective. Cf. *Allen Bradley Co.* v. *Local Union No. 3*, *supra*; *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, and *United States* v. *Women's Sportswear*

do not rely, as petitioners must, on general and unsupported presumptions drawn from industrial history or industrial life (Br. 13). In each there were facts, not present or even alleged here,[8]

Ass'n, 336 U.S. 640. In any event *Lake Valley and Bakery Drivers* were cases in which so-called "vendors" were being utilized to supplant union employee-drivers, or to threaten such action, and *Oliver* involved a long history demonstrating that the owner-drivers' rental rates were "integral * * * to the establishment of a stable wage structure." *United States v. Drum*, 368 U.S. 370, 382-383, note 26.

[8] At the outset of this case, the appellants offered to prove a fact background comparable to the showing in *Local 24 v. Oliver*, *supra*, but the claim was apparently abandoned. Compare the Stipulation (R. 32-33, Stip. 65, 66, 67), with the following from "*Defendants' Memorandum of Contentions of Fact and Law*", pages 3-4, filed with the court below on December 12, 1960:

"8. For many years the Union has negotiated collective bargaining agreements with the processors covering, in detail, wages, hours, overtime rates, holiday pay, vacations, health and welfare contributions and similar benefits as the collective bargaining agent of their employee-drivers and inside workers. In the course of the negotiation of these successive labor agreements, the processors have threatened to expand the "peddler system" for the collection of waste grease and other meat by-products in order to reduce the Union's wage and other demands, to have available a ready source of strikebreakers if the Union struck in support of its demands and to replace employee-drivers. On occasion, processors have threatened to convert their employee-drivers into peddlers by making a fictitious transfer to them of title to trucks and thereafter to base their earnings upon an employer dictated "sale" price of the grease collected and delivered by them.

"9. Beginning in 1934 and continuing thereafter, the Union actively organized the grease peddlers into union membership and adopted union membership provisions applicable to their operations designed to prevent such peddlers from undermining employee wages and working

which showed the existence of job or wage competition between the businessmen and the employee members. Apellants' argument must fail for neither these cases nor any other decisions or statutes establish a conclusive presumption that there is a Union interest in any case in which businessmen and Union members perform similar physical functions.

At bottom, appellants rely upon an "assault" which the owner-driver peddler system has made over the past 25 years on conditions of employment in the transportation and service trades in other industries and in other parts of the country. But this cannot displace the present record which shows no such conflict in this industry in this area of the country—past, present, or future (see Statement, *supra*, pp. 10–11). We emphasize that the record before the lower court was submitted and prepared by both parties to present the facts deemed relevant to the issue now on review. The facts are not in dispute. Among the record facts, all that appellants point to is that (a) each of the eight processors employs union members (in unspecified capacities), and (b) four of the eight processors employ Union drivers to transport grease from restaurants to the processors' plants (Br. 13). This is no evidence at all to combat the court's holding—unchallenged here—that there was no "competition" of the type suggested (R. 45), and that the Union interest in the peddlers was in no way con-

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conditions, from acting as strikebreakers, and from diminishing the employee-members' employment opportunities."

All these claims are either omitted from, or contrary to, the Stipulation, *supra*.

nected with the wages or working conditions of Union employees (R. 44, 45, 47, 48).[9] This holding rests on findings that the peddlers and employee members collected grease from different sources and served the needs of different groups of processors. It was based further on stipulated facts that at no time had any processors taken action or threatened to take action to make use of peddlers for strike-breaking purposes or to substitute peddlers for driver-employees in the acquisition of grease. See Statement, *supra*, pp. 10–11.

5. Appellants' argument that the decree contravenes the First Amendment in that it restricts freedom of assembly is answered by this Court's decision in *Giboney* v. *Empire Storage and Ice Co.*, 336 U.S. 490. There it was held that the right to picket peacefully, equally protected by the First Amendment, was no bar to a state court injunction against picketing Empire to force it to stop selling ice to peddlers and thereby to force Empire into a combination in restraint of trade. The Court pointed out that the appellants' union activities, including the picketing, "constituted a single and integrated course of conduct, which was in violation" of the State law (*id.* at 498). The Court rejected the contention "that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part

[9] Should these circumstances change, an equity decree is a continuing decree subject to modification, even in the absence of specific reservation, "by force inherent in the jurisdiction of the chancery." *United States* v. *Swift & Co.*, 286 U.S. 106, 114; *Donaldson* v. *Read Magazine*, 333 U.S. 178, 184; and see *United States* v. *Fallbrook Public Utility District*, 193 F. Supp. 342 (S.D. Cal.).

of conduct in violation of a valid criminal statute" (*ibid.*). Surely freedom of assembly gives businessmen no greater right to join something called a "union" than to join a combination called a trade association.

In the present case it is clear that the peddlers used their status in the Union local both as the means of forcing dissident peddlers and processors into the conspiracy and as the means of achieving their unlawful objectives of enabling the Union, peddlers and processors to control the business of purchasing and selling waste grease in the Los Angeles area. In view of the demonstrated proclivities of the appellants, and their acknowledgement of the Union's unique advantages in the peddlers' continuing quest for price fixing, the court's decree did not infringe any rights protected by the First Amendment.

C. *The decree properly directed the Union to expel its peddler members even though all such members were not parties to the suit.*

Finally, appellants contend (Br. 19–20) that, apart from the propriety of ordering the union to expel the peddlers, the court had no authority to require the expulsion of those peddler members who were not parties to the case. The argument is that each peddler has a "separate and distinct statutory and contractual interest in his own membership" which, consistently with due process, may not be terminated "absent a full and fair hearing" (Br. 19). Appellants urge that since only four of the 35–45 peddler members were made parties defendant, the case should be remanded "for the purpose of according a hear-

ing to those against whom the judgment was issued" (Br. 20).

The short answer to this contention is that the judgment directing expulsion of the peddlers runs only against the Union, and that this order was entered after a "full and fair hearing" in which the Union had full opportunity to, and did, present all its arguments against the order. There is no claim that the interests of the non-defendant peddler members were in conflict with those of the Union or the four members who were made parties, or that the Union inadequately represented its members' interests in resisting the order. None of the other peddler members sought to intervene before the district court on the ground that the Union was not properly representing them (see *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683, 692). Under these circumstances the district court properly concluded that "the interested parties (Local Union 626, including its grease peddler members)" had been given "a full hearing" (R. 52).

It seems somewhat anomalous, to say the least, for the Union, after having vigorously contended for the membership rights of all its peddlers, now to urge that their interests were inadequately represented. If, in fact, the members were not represented by the Union, then the Union has no standing here to rely on the deprivation of rights of third parties as grounds for reversal of the order issued only against the Union. *United States* v. *Raines*, 362 U.S. 17, *Tileston* v. *Ullman*, 318 U.S. 44; *Tyler* v.

Judges of the Court of Registration, 179 U.S. 405; compare *Barrows* v. *Jackson*, 346 U.S. 249.

In any event, the scope of the decree is within the recognized power of an equity court to enforce the public interest in proceedings under both the antitrust laws and other statutes. Decrees and orders in such proceedings have frequently affected the rights of persons not before the court. See *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 363–366; *United States* v. *National Lead Co.*, 63 F. Supp. 513, 525, fn. 8 (S.D. N.Y.), affirmed, 332 U.S. 319. This Court has ordered dissolution of a trade association even though all of its members were not before the Court (*Hartford-Empire Co.* v. *United States*, 323 U.S. 386), and the Court has struck down contractual arrangements even though the lessees, licensees and other parties to the agreements were not before it (*International Boxing Club* v. *United States*, 358 U.S. 242; *United States* v. *Univis Lens Co.*, 316 U.S. 241; *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436; *Interstate Circuit* v. *United States*, 306 U.S. 208; *Paramount Famous Lasky Corporation* v. *United States*, 282 U.S. 30).

In *National Licorice Co.*, the Court upheld the authority of the Board to order an employer not to enforce contracts with its employees, found to have been procured in violation of the National Labor Relations Act, even though the employees were not parties to the proceeding. As here, it had been urged that in the absence of the employees who signed the contract, the Board was powerless to declare it void. In upholding the Board's power, the Court noted that the

order was made to carry out the public purposes of the Act and stated (309 U.S. at 365):

> * * * the order does not go beyond those in suits brought by the United States to restrain violations of the Sherman Act, where the injunction was broad enough to prevent the offender from carrying out contracts with persons not parties to the suit.[10]

Similarly, in the present case, the district court, on finding that the peddler members of the Union had engaged with the Union in a conspiracy to restrain trade, and that the public purpose of the Sherman Act required termination of the relationship, had power to order the necessary relief. As in *National Licorice Co.* and the other cases cited above, the fact that all the members affected by this order were not made parties did not deny to the court the power to enforce the Act.

Further support for this conclusion is found in Rule 65(d) of the Federal Rules of Civil Procedure, which provides that an injunction may bind "the parties to the action, their officers, agents, servants, employees, and attorneys, and * * * those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." This Court has said that the Rule 65(d) "is derived from the common-law doctrine that a degree of

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[10] The Court also noted that in proceedings before the Federal Trade Commission orders restraining unfair methods of competition had precluded the performance of outstanding contracts by the offender even though the holders of those contracts were not made parties. *National Licorice Co.* v. *National Labor Relations Board*, *supra*, at 366.

injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co.* v. *National Labor Relations Board*, 324 U.S. 9, 14.[11] The Court there pointed out that a Board order and a court enforcement order running against "successors and assigns" was permissible to the extent that it reached persons defined in Rule 65(d). We submit that the absent grease peddlers were "identified in interest," in "privity," and "represented" by the Union in the court below, within the meaning of the *Regal* opinion.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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SEPTEMBER 1962.

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[11] And see *In re Lennon*, 166 U.S. 548; *International Brotherhood* v. *Keystone F. Lines*, 123 F. 2d 326 (C.A. 10).

APPENDIX

Sherman Act, Sections 1, 4, 26 Stat. 209, as amended, 15 U.S.C. 1, *et seq.*:

> § 1. *Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.*
>
> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *
>
> * * * * * * *
>
> § 4. *Jurisdiction of courts; duty of United States attorneys; procedure.*
>
> The several district courts of the United States are invested with jurisdictions to prevent and restrain violations of sections 1–7 of this title; * * *

Clayton Act, Sections 6, 20, 38 Stat. 731, 738, 15 U.S.C. 17, and 28 U.S.C. 52:

> § 6. *Antitrust laws not applicable to labor organizations.*
>
> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conduct for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

§ 20. Statutory restriction of injunctive relief.

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto;

nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Norris-La Guardia Act, Section 4, 47 Stat. 70, 29 U.S.C. 104:

§ 104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified: and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

National Labor Relations Act, Section 1, 49 Stat. 449, as amended, 29 U.S.C. 151:

§ 151. *Findings and declaration of policy.*

* * * * *

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

National Labor Relations Act, Section 2(3), 49 Stat. 450, as amended, 29 U.S.C. 152(3):

§ 152. *Definitions.*

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, * * * but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, * * *

National Labor Relations Act, Section 7, 49 Stat. 452, as amended, 29 U.S.C. 157:

§ 157. *Right of employees as to organization, collective bargaining, etc.*

* * * * * *

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

National Labor Relations Act, Section 8(b) (1), (4)(A), 49 Stat. 452, as amended by 61 Stat. 140, as amended, 29 U.S.C. 158(b) (1), (Supp. III) (4) (i)(A):

* * * * * *

§ 158. *Unfair labor practices*

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

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IN THE

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No. 38.

OCTOBER TERM, 1962.

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; MEYER SINGER; LEE TAYLOR; HUBERT BRANDT; WALTER KLEIN; and HAROLD CARLIS,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

APPELLANTS' REPLY BRIEF.

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ARGUMENT

The Union in its principal brief demonstrated that the Justice Department as a matter of enforcement policy seeks decrees requiring the expulsion from membership of non-employee union members upon proof of an anti-trust violation (Union Br. pg. 9). Although the Justice Department argues at length the facts demonstrating the

existence of a concealed violation of the Sherman Act, it does not deny the existence of such "enforcement policy".

Moreover, the Justice Department virtually concedes the inappropriateness of an expulsion from membership decree in any case in which the existence of present, active job competition between employee and non-employee members is established by testimonial evidence (Gov. Br. pp. 27-31). Historical facts, the experience of the Interstate Commerce Commission and the findings of impartial students are not relevant according to the Justice Department. Rather the Justice Department insists that the case must turn upon the existence or absence of testimonial evidence.

Much is made of the fact that the Union stated an intention to prove by testimonial evidence the existence of a factual pattern similar to *every other* case involving owner-drivers or peddlers which has been before this Court and that the stipulation does not reflect such facts (Gov. Br. pg. 28). At the time the stipulation was "negotiated" there were and are several substantial civil anti-trust actions growing out of the facts involved in this case pending in the federal courts. Had the Union unsuccessfully contested the fact of violation in this case, its position in the civil litigation would have been seriously prejudiced. In these circumstances, the Union was compelled to stipulate to the facts asserted by the Justice Department. Except for one paragraph (R. 57, Finding 6) none of the evidence available to the Union is reflected in the stipulation and this is the result of a lack of negotiating power rather than lack of evidence.

In any event, this Court need not and should not blind itself to critical impact of the owner-driver, peddler, vendor system upon Union wages and conditions. The teaching of history is too plain to permit such a course.

CONCLUSION

For the foregoing reasons, the challenged provisions of the judgment below should be set aside.

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